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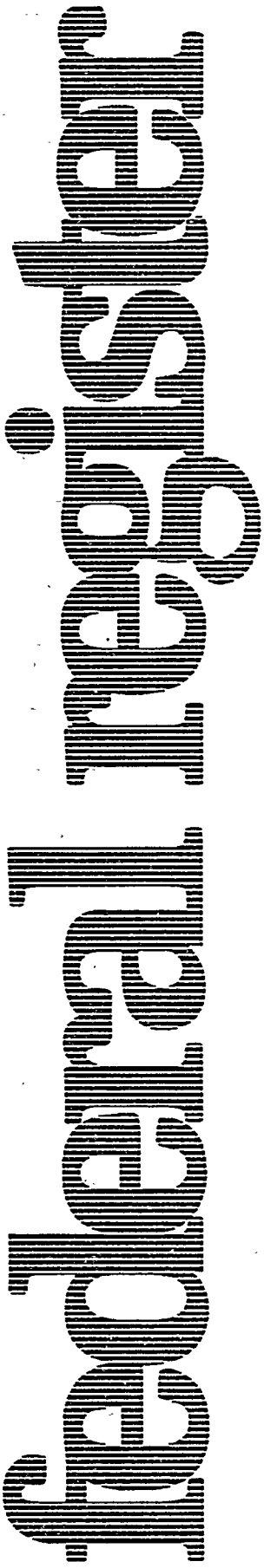

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Highlights

76783 Iranian Assets Control Treasury / Office of Foreign Assets Control adds interpretative provisions to the regulations; effective 12-26-79

77118 Mandatory Petroleum DOE / ERA adopts amendments to the price regulations to increase nonproduct costs permitted to be passed through by refiners, resellers and retailers in the wholesale and retail selling prices of propane; effective 1-1-80 (Part XIII of this issue)

77110 Public Utilities DOE / ERA issues a notice of voluntary guidelines on procedures for termination of electric service and gas service (Part XII of this issue)

76754 Banking FHLBB introduces as a final rule changes in the manner of calculating reduction of liquidity deficiency penalty under certain circumstances; effective 12-21-79

76757 Banking FHLBB releases a final rule relating to acquisition credits subject to deferral; effective 12-21-79

76756 Banking FHLBB publishes a final rule regarding guidelines concerning director interlocks; effective 12-21-79

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Highlights

76858 **Banking** FDIC changes its policy statement setting forth procedures for development and review of its regulations; effective date 12-20-79

76800 **Banking** FDIC amends its regulations pertaining to securities disclosure; comments by 2-26-80

76774 **Securities** SEC publishes a final rule regarding securities position listings; effective 1-28-80

76777 **Securities** SEC defers until 1981, the effective date of the quarterly reporting requirements for smaller life insurance companies

76781 **Income Tax** Treasury / IRS provides final regulations concerning the tax treatment of certain short-term corporate obligations and certificates of deposit, time deposits and bonus plans entered into by banks

76813 **Income Tax** Treasury / IRS proposes rules clarifying the continuity of business enterprise requirements for corporate reorganizations; comments by 2-25-80

76817 **Income Tax** Treasury / IRS proposes rules relating to credit for the employment of individuals qualifying as members of a targeted group; comments by 2-25-80

76815 **Income Tax** Treasury / IRS proposes a rule relating to the discharge of liabilities on the sale or other disposition of property; comments by 2-25-80

77006 **Equal Employment Opportunity** Labor / FCCPO issues a proposed rule regarding affirmative action requirements of government contractors; comments by 2-26-80 (Part VI of this issue)

76916 **Sunshine Act Meetings**

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76990 **Part III, Labor / ETA**
76997 **Part IV, HEW / NIH**
77000 **Part V, Labor / FCCPO**
77006 **Part VI, Labor / FCCPO**
77026 **Part VII, Labor / W & H**
77036 **Part VIII, Labor / W & H**
77080 **Part IX, Labor / W & H**
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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Chapter I

Civil Service Reform Act of 1978 and Reorganization Plan No. 2 of 1978; Nomenclature and Editorial Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document transmits editorial and nomenclature changes necessary to bring Chapter I of Title 5, CFR, into conformance with changes brought about by the Civil Service Reform Act of 1978 and Reorganization Plan No. 2 of 1978.

EFFECTIVE DATE: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones, Issuance System Manager, 202–254–7086.

SUPPLEMENTARY INFORMATION: At 44 FR 47523 on August 14, 1979, the Office of Personnel Management published a document making general nomenclature changes to 5 CFR Chapter I, to bring the chapter into conformance with the Civil Service Reform Act (Pub. L. 95–454) and Reorganization Plan Number 2 of 1978. This document makes nomenclature and editorial changes which were inadvertently omitted from the material published that day (FR Doc. 79–24969).

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, Chapter I, as follows:

PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

§ 177.106 [Amended]

(1) In § 177.106, change "$200" to read "$500" in each place it appears.

PART 179—CLAIMS COLLECTION STANDARDS

§ 179.102 [Amended]

(2) In § 179.102, change "Director of the Bureau of Retirement and Insurance" to read "Associate Director for Compensation."

PART 180—EMPLOYEES' PERSONAL PROPERTY CLAIMS

§ 180.107 [Amended]

(3) In the introductory text of § 180.107(c), change "bureau" to read "associate."

§ 180.108 [Amended]

(4) In the introductory text of § 180.108(a), change "bureau" to read "associate."

PART 213—EXCEPTED SERVICE

§ 213.3190 [Redesignated as § 213.3191]; § 213.3191 [Redesignated as § 213.3190]; § 213.3170 (a) and (b) [Redesignated § 213.3191 (b) and (c)]; § 213.3290 [Redesignated § 213.3291] and § 213.3170 [Revoked]

(5) Part 213 is amended by redesignating § 213.3190 to read § 213.3191; and by redesignating § 213.3191 to read § 213.3190. § 213.3170 (a) and (b) are redesignated § 213.3191 (b) and (c) respectively. § 213.3170, "Civil Service Commission," is revoked. § 213.3290 is redesignated § 213.3291.

§ 213.3107 [Amended]

(6) In § 213.3107(c)(2), change "Board of U.S. Civil Service Examiners" to read "OPM area office."

§ 213.3112 [Amended]

(7) In § 213.3112(a)(8), change "Board of U.S. Civil Service Examiners" to read "OPM area office."

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

§§ 511.701 and 511.702 [Amended]

(8) In §§ 511.701(b)(2) and 511.702(b), change "bureau" to read "Group."

PART 720—FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM

Appendix [Amended]

(9) In Part 720, in section II.D. of the Appendix, delete the words "(as of January, 1979, the OPM)." in the fourth sentence.

PART 831—RETIREMENT

PART 870—REGULAR LIFE INSURANCE

PART 871—OPTIONAL LIFE INSURANCE

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

(10) In Parts 831, 870, 871, and 890, make the following nomenclature changes:

Change from—	To—
Bureau of Retirement, Insurance, and Occupational Health.	Associate Director for Compensation.
Bureau of Retirement and Insurance.	Associate Director for Compensation.
Director of the Bureau	Associate Director.
Bureau	Associate Director.
(S)he	He/she.

PART 891—RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS

(11) In Part 891, change "Bureau of Retirement and Insurance" to read "Associate Director for Compensation."

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

§ 1001.735–203 [Amended]

(12) In § 1001.735–203(c), change "Bureau directors" to read "Associate Directors."

(13) In the entire chapter, "Commission," when referring to any Commission other than the former Civil Service Commission, should continue to read "Commission."

(Pub. L. 95–454; Reorganization Plan No. 2 of 1978)

[FR Doc. 79-39544 Filed 12-27-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Parts 831, 870, 871, 890, 891

Retirement; Federal Employees Group Life Insurance; Federal Employees Health Benefits Program; Retired Federal Employees Health Benefits Program; Reconsideration Procedures

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: At 44 FR 37877, on June 29, 1979, the Office of Personnel Management published interim regulations on Retirement, Federal Employees Group Life Insurance, Federal Employees Health Benefits Program, Retired Employees Health Benefits Program, and Reconsideration Procedures. These interim regulations were required by the Civil Service Reform Act of 1978, Reorganization Plan No. 2 of 1978, and the final order in the case of *Shannon* v. *U.S.C.S.C.*, 444 F. Supp. 354, (N.C. CA 1977).

The effective date was "June 29, 1979, and thereafter for a period of 6 months—or until final regulations are issued—whichever comes first." Because development of the final regulations is requiring more time than was originally anticipated, the Office of Personnel Management is revising the effective date to read:

"**EFFECTIVE DATE:** June 29, 1979, and thereafter, until superseded by final rulemaking."

(Pub. L. 95-454; Reorganization Plan No. 2 of 1978)

Office of Personnel Management.

Roderick S. Speer,

Assistant Issuance System Manager.

December 21, 1979.

[FR Doc. 79-39614 Filed 12-27-79; 8:45 am]

BILLING CODE 6325-01-M

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Noninflationary Pay and Price Behavior Changes and Additional Questions and Answers

AGENCY: Council on Wage and Price Stability.

ACTION: Interim final rules, questions and answers, and a request for comments.

SUMMARY: The Council is modifying the low-wage exemption from the pay standard. These modifications implement the policies recommended by the Pay Advisory Committee and accepted by the Council.

DATES: The effective date for these changes and Questions and Answers is December 28, 1979. Written comments may be submitted by January 28, 1980.

ADDRESS: Written comments should be addressed to: Office of the General Counsel, Council on Wage and Price Stability, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Office of Pay Monitoring

Janice Murphey—456-7103
Lucretia Tanner—456-7180
Malcolm Liggett—456-7180
Homer Jack—456-7180

Office of the General Counsel

Daniel Duff—456-6210
Jane Campana—456-6210

SUPPLEMENTARY INFORMATION: On September 28, 1979, the President announced the creation of a Pay Council on policies that encourage anti-inflationary behavior by employers and labor, that decelerate the rate of inflation, and that provide for a fair and equitable distribution of the burden of restraint. The committee's charter provides that it will recommend new or revised interpretations of the pay standard. Until the Council acts on any recommendations, the first-year pay standards (in subpart 705B) remains in effect with the modifications that have been adopted (see the Council's questions and answers published in the Federal Register on October 12, 1979 (44 FR 56900), and November 19, 1979 (44 FR 66534); see also Federal Register of December 17, 1979 (44 FR 73003)).

On December 18, 1979, the Committee recommended that the exemption for low-wage employees (Section 705B-8) be modified to exempt employee units with average straight-time wage rates of $5.35 per hour or less. In addition, the Committee recommended that the $4.00-per-hour exemption for individual employees be continued, but that employers be given the choice of including *or* excluding these individuals in making compliance calculations. The Council has decided to accept these recommendations, and section 705B-8 is modified accordingly. The new low-wage exemption for employee units reduces administrative burdens on companies with significant numbers of low-wage employees and helps to prevent problems associated with compression of the pay structure that can result from application of the exemption for individual low-wage workers. Allowing employers the option of including or excluding low-wage individuals is in keeping with the Council's policy of administering the standard in a flexible manner where this is not inconsistent with the objectives of the anti-inflation program.

Explanatory questions and answers on this matter are also being published by the Council.

The Council is publishing these materials on an interim final basis since many companies that are establishing their pay plans have a need to know and must be able to rely on the Council's new treatment of low-wage employees. The Council has provided a 30-day comment period, since it is important to receive any public comments as soon as possible so that any changes may be made rapidly. However, companies may rely fully on these interim final changes to Part 705 and the questions and answers until these materials are modified.

Issued in Washington, D.C., December 21, 1979.

R. Robert Russell,

Director, Council on Wage and Price Stability.

Accordingly, in the Appendix to Part 705, section 705B-8 is revised on an interim basis to read as follows:

705B-8 Low-Wage Exemption.

(a) Employee units with an average straight-time hourly wage rate of $5.35 or less during the third quarter of 1979 are exempt from the pay standard in the second program year.

(b) Individual employees in other employee units who were earning $4.00 or less per hour in straight-time wages on October 1, 1978, may be either excluded from or included in all pay-rate computations for the second program year. If such employees are included, any portion of their pay-rate increases that exceeds the pay standard should be excluded in determining compliance. Employees should also be prepared to demonstrate that, if low-wage employees are included, they are being treated equitably.

In addition to amending section 705B-8, the Council is publishing the following questions and answers relating to the voluntary pay standard:

II J. Low-wage exemption.

Q1. Which individual employees are exempt under § 705B-8?

A. Employees who were earning $4.00 per hour or less in straight-time wages on October 1, 1978, and all employees hired since that date at a straight-time wage rate of $4.00 per hour or less.

Q2. Is there any ceiling on the pay-rate increases granted to employees

exempted under the low-wage provision?

A. No.

Q3. Should incentive pay be included in the calculation of straight-time hourly wages?

A. Yes.

[FR Doc. 79-39661 Filed 12-26-79; 9:27 am]
BILLING CODE 3175-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

[Texas Orange and Grapefruit Reg. 31, Amdt. 1; Orange Import Reg. 10, Amdt. 1]

Oranges and Grapefruit Grown in Texas; Fruits: Import Regulations; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments extend current grade and size requirements for oranges and grapefruit grown in Texas, and for oranges imported into the United States through November 9, 1980. Unless extended, these requirements would expire December 31, 1979. Extension of these requirements is necessary to assure the continued shipment of oranges and grapefruit, and importation of oranges, of acceptable grades and sizes, for the rest of the 1979–80 season, in the interest of producers and consumers.

DATES: Effective January 1, 1980, through November 9, 1980.

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

SUPPLEMENTARY INFORMATION: *Findings.* The amendment to the Texas orange and grapefruit regulation currently in effect (§ 906.362 Texas Orange and Grapefruit Regulation 31; 44 FR 62475) is issued under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The amendment to the orange import regulation currently in effect (§ 944.309 Orange Import Regulation 10; 44 FR 62475) is issued under § 8e (7 U.S.C. 608e–1) of this act. The grade and size requirements applicable to Texas oranges and grapefruit were recommended by the Texas Valley Citrus Committee, which locally administers this marketing program. Notice of these proposed amendments was published in the December 3, 1979, issue of the Federal Register (44 FR 69303). No comments were received during the 15 days provided in the notice.

These grade and size requirements reflect the Department's appraisal of the need for regulating oranges and grapefruit during the period January 1, 1980, through November 9, 1980, based on the available supply and demand conditions.

The Texas orange crop for the 1979–80 season is estimated at 4,000,000 boxes (85 pounds net weight), compared with 6,400,000 boxes produced in 1978–79. The Texas grapefruit crop for the 1979–80 season is estimated at 6,500,000 boxes (80 pounds net weight), compared with 9,000,000 boxes produced in 1978–79.

The committee estimates that about 55 percent of the Texas orange crop, and 60 percent of the Texas grapefruit crop will be needed to fill the demand in the regulated domestic market, Canada, and Mexico. The balance will be available for other markets such as the fresh export market, the processed products market, and the local unregulated market within the production area. Fresh shipments of Texas oranges and grapefruit meet considerable competition in major markets from citrus produced in other areas of the country. This season, 1.6 percent of the nation's orange supply and 8.7 percent of the nation's grapefruit supply is expected to be produced in Texas. More than adequate supplies of fresh oranges and grapefruit should be available to fill domestic market demands.

Under these amendments, Texas oranges and imported oranges are required to grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2; and be at least 2$^{6}/_{16}$ inches in diameter (size 288's). Texas grapefruit are required to grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2, and be at least 3$^{6}/_{16}$ inches in diameter (size 98's) except that grapefruit which are at least 3$^{5}/_{16}$ inches in diameter (size 112's) may be shipped if they grade at least U.S. No. 1.

The grade and size requirements for imported oranges are consistent with § 8e of the act. This section requires that when specified commodities, including oranges, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity, grown in the area in most direct competition with the imported commodity.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is found that amendment of the regulations, as hereinafter set forth, is necessary to establish and maintain orderly marketing conditions, and that such action is in accordance with this marketing agreement and order, and will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date of this amendment until 30 days after publication in the Federal Register (5 U.S.C. 553), and good cause exists for making the provision hereof effective as hereinafter set forth in that (1) shipments of Texas oranges and grapefruit and imported oranges are currently regulated by grade and size through December 31, 1979, and these regulatory requirements will expire at such time unless extended; (2) the Texas orange and grapefruit and orange import regulations should be extended to cover, insofar as practicable, all of this season's shipments of Texas oranges and grapefruit, as well as all oranges imported into the United States over a corresponding period, in order to effectuate the declared policy of the act; (3) notice of the proposed extension of the current regulations for oranges and grapefruit grown in Texas and for oranges imported into the United States was published in the December 3, 1979, issue of the Federal Register (44 FR 69303), and no comments relating to the proposed amendments or their effective date were received during the 15 days provided; (4) the recommendations upon which the current regulation and this amendment for Texas oranges and grapefruit are based were developed by the committee at an open meeting on October 2, 1979, after due notice thereof, and all interested persons present were given an opportunity to express their views; (5) the regulatory requirements herein specified for Texas oranges and grapefruit and imported oranges are the same as those in the proposed amendments; (6) the requirements of the amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such import requirements mandatory; (7) such amendment to the import regulation imposes the same grade and size requirements on imports of oranges as are being made applicable

to shipments of oranges grown in Texas; (8) the Department has determined that imported oranges are in most direct competition with oranges grown in Texas under M.O. 906; (9) the effective date of the domestic and import regulation, if reasonably practicable, should be identical; and (10) three days notice thereof, the minimum prescribed by said § 8e, is given with respect to this import regulation.

This final rule has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant". An Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Telephone: (202) 447-5975.

Accordingly, it is found that § 906.362 Texas Orange and Grapefruit Regulation 31, and § 944.309 Orange Import Regulation 10, should be and are amended to read as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN TEXAS

§ 906.362 Texas Orange and Grapefruit Regulation 31.

(a) During the period January 1, 1980, through November 9, 1980, no handler shall handle any variety of oranges or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Such oranges are at least pack size 288, as such size is specified in § 2851.691(c) of the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2$\frac{9}{16}$ inches;

(3) Such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in § 2851.630(c) of the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3$\frac{9}{16}$ inches: *Provided,* That any handler may handle grapefruit smaller than pack 96, provided such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3$\frac{5}{16}$ inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing agreement and order.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and diameter shall mean the same as in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), (7 CFR 2851.680–2851.714) or in the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona), (7 CFR 2851.620–2851.653).

PART 944—FRUITS; IMPORT REGULATIONS

§ 944.309 Orange Import Regulation 10.

(a) *Applicability to Imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations the importation into the United States of any oranges is prohibited during the period January 1, 1980, through November 9, 1980, unless such oranges meet the minimum grade and size requirements specified in § 906.362 Texas Orange and Grapefruit Regulation 31.

(b) It is hereby determined that imported oranges are in most direct competition with oranges grown in the Lower Rio Grande Valley in Texas, and that the requirements specified in this section for imported oranges are the same as those for Texas oranges in § 906.362 Texas Orange and Grapefruit Regulation 31.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges that are imported into the United States. Inspection by the Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective Service, applicable to the particular shipment of oranges, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Certification (7 CFR Part 944.400)

(d) The term "importation" means release from custody of the United States Customs Service.

(e) Any person may recondition any shipment of oranges prior to importation, to make it eligible for importation.

(f) *Minimum quantity exemption:* Any person may import up to ten $\frac{7}{10}$ bushel cartons, or equivalent quantity, of oranges exempt from the requirements specified in this section.

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

Dated: December 21, 1979, to become effective January 1, 1979.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 79-39729 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 232]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period Dec. 30, 1979–Jan. 5, 1980. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: December 30, 1979.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on December 18, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during

the specified week. The committee reports the demand for lemons is easier.

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

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202-447-5975.

§ 910.532 Lemon Regulation 232.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 30, 1979, through January 5, 1980, is established at 175,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Charles R. Brader,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-39399 Filed 12-27-79; 12:15 pm]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

Brucellosis Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments add the counties of Chase, Hitchcock, and Sioux in Nebraska to the list of Certified Brucellosis-Free areas and delete such counties from the list of Modified Certified Brucellosis Areas. It has been determined that these counties qualify to be designated as Certified Brucellosis-Free Areas. The effect of this action will allow for less restrictions on cattle moved interstate from these areas.

EFFECTIVE DATE: December 28, 1979

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

SUPPLEMENTARY INFORMATION: A complete list of brucellosis areas was published in the Federal Register (44 FR 36373-36375) effective June 22, 1979. These amendments update the complete list. These amendments add the counties of Chase, Hitchcock, and Sioux in Nebraska to the list of Certified-Brucellosis-Free Areas in § 78.20 and delete such counties from the list of Modified Certified Brucellosis Areas in § 78.21, because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area contained in § 78.21(1) of the regulations.

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

§ 78.20 Certified Brucellosis-Free Areas.

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

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

(b) Specific Counties Within States.

Alabama. Dale, Geneva.

Arkansas. Baxter, Bradley, Carroll, Columbia, Crittenden, Dallas, Drew, Fulton, Garland, Grant, Jefferson, Marion, Monroe, Montgomery, Newton, Ouachita, Stone, Union, Woodruff.

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

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

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

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

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

Kansas. Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Coffey, Comanche, Crawford, Decatur,

Dickinson, Doniphan, Douglas, Edwards, Ellsworth, Finney, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harvey, Haskell, Hodgeman, Jewell, Johnson, Kearney, Kingman, Kiowa, Labette, Lane, Leavenworth, Lincoln, Logan, Marion, Marshall, Meade, Miami, Mitchell, Ness, Norton, Osage, Osborne, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Republic, Riley, Rooks, Rush, Saline, Scott, Seward, Shawnee, Sheridan, Sherman, Smith, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Woodson, Wyandotte.

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

Mississippi. Alcorn, Harrison.

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

Nebraska. Banner, Box Butte, Burt, Chase, Cheyenne, Clay, Colfax, Cuming, Dakota, Deuel, Dodge, Douglas, Franklin, Hitchcock, Jefferson, Lancaster, Nuckolls, Perkins, Sioux, Stanton, Thayer, Thurston, Washington, Wayne.

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

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

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

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

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

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

§ 78.21 Modified Certified Brucellosis Areas.

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

(a) Entire States: Alaska, Louisiana, Oklahoma.

(b) Specific Counties Within States.

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

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

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

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

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

Illinois. Jo Daviess.

Iowa. Adams, Guthrie.

Kansas. Allen, Atchison, Barton, Butler, Cloud, Cowley, Elk, Ellis, Franklin, Greenwood, Harper, Jackson, Jefferson, Linn, Lyon, McPherson, Montgomery, Morris, Morton, Nemaha, Neosho, Ottawa, Reno, Rice, Russell, Sedgwick, Stafford, Wilson.

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson Jefferson, Jessamine, Larue, Laurel,

Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Twigg, Union, Warren, Washington, Wayne, Webster, Woodford.

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

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

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

New Mexico. Bernalillo, Chaves, Curry, Eddy, Lea, Mora, Roosevelt.

South Dakota. Faulk, Jones, Stanley.

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

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

Utah. Box Elder, Garfield.

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

§ 78.22 Noncertified areas.

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

(a) Entire States. Yellowstone National Park.

(b) Specific Counties Within States.

Florida. Highlands, Okeechobee.

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

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

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

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

preparation of an impact analysis statement at this time.

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

Done at Washington, D.C., this 20th day of December 1979.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-39490 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

Securities of Insured State Nonmember Banks; Proxy Statements, Reports and Other Matters; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 79-36526 at page 67627 in the Federal Register of Tuesday, November 27, 1979, certain incorrect references were made and words omitted.

The errors are corrected as set forth below.

1. "Item 6(g)" is substituted for "Item 6(i)" in the second line of the DATES paragraph in the second column of page 67627 and in the last line of paragraph B in the first column of page 67628.

2. The word "Exchange" in the last line of § 335.41, Item 6(d)(2) in the first column of page 67633 is deleted.

3. The clause "* * * or in the case of a group, $5,000 for each person in the group.", is inserted after the term "$5,000" in § 335.51, Item 7, Instruction 2(b)(ii)(B) in the second column on page 67640.

DATE: This correction is effective on December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Attorney, or Louis E. Wright, Financial Analyst, Federal Deposit Insurance Corporation, 550 Seventeenth Street, NW., Washington, DC 20429 202/389-4422 or 389-4651.

Dated: December 19, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 79-39575 Filed 12-27-79; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 523

[No. 79-680]

Members of Banks; Reduction of Liquidity Deficiency Penalties

December 21, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: Member institutions are required to maintain certain percentages of their funds in liquid assets. Failure to do so may result in assessment of a penalty. This rule changes the manner of calculating reduction of a liquidity deficiency penalty when the deficiency is caused by aggregate net savings withdrawals. This change is intended to liberalize liquidity deficiency penalty requirements. Institutions may use the old rule or the new rule in calculating deficiencies for the months of December 1979 through March 1980; for later months, the new rule is applicable.

EFFECTIVE DATE: December 21, 1979.

FOR FURTHER INFORMATION, PLEASE CONTACT: Dwight L. Arnall, Regional Supervisor, Office of Examinations and Supervision (202-377-6522), or Patricia C. Trask, Attorney, Office of General Counsel (202-377-6442), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Federal Home Loan Bank System member institutions (except certain mutual savings banks and insurance companies) are required by 12 CFR 523.10 to maintain liquidity levels set out in that section. If an institution has a liquidity deficiency at the end of a calendar month, a penalty may be imposed.

Existing provisions of 12 CFR 523.12 allow an institution to reduce any deficiency in the first two months of each interest distribution period (generally, a calendar quarter) by these amounts: (a) in the first month, by the amount of aggregate net withdrawals from withdrawable accounts occurring during the last 3 business days of the previous month and the first 10 calendar days of the current month; (b) in the second month, by one-half the amount used as a reduction in the first month. There is no provision for a reduction in the third month.

By Resolution No. 79-380 dated July 12, 1979, the Board proposed to amend subparagraph (a)(2) of 12 CFR 523.12 to liberalize the bases for calculating reduction of the penalty. Published at 44 FR 41827 on July 18, 1979, the proposal was open for public comment until September 17, 1979. As proposed, the amendment would permit member institutions to reduce a liquidity deficiency caused by aggregate net withdrawals from withdrawable accounts on a monthly basis, rather than on the basis of a quarterly interest distribution period. Thus, the penalty for a liquidity deficiency could be avoided monthly when there is a net savings outflow. In the following month, even if there is a net savings gain, a liquidity deficiency penalty would still be reduced to the extent that the gain did not recoup the previous month's loss of savings. On the basis of comments received and other material available to it, the Board is adopting regulatory amendments substantially as proposed, with modifications discussed later in this section.

Discussion of comments. The Board received 27 public responses which overwhelmingly favored the changes for reasons stated in the proposal, the most important of which was recognition of the trend away from distributing interest on savings deposits on a quarterly basis due to the expanded types of accounts now offered, such as money market and other certificates, which have various terms to maturity. Since savings deposits and withdrawals are no longer concentrated in the last 3 days of the distribution period and the first 10 days of the next distribution period, the present formula is no longer appropriate.

Two respondents urged the Board to reduce the liquidity requirements because of present economic conditions. Although this request falls outside the scope of this proposal, it is noted that the Board acted on October 25 to reduce these requirements.

One respondent advocated elimination of penalties for the following reasons: (a) assessment of such penalties is inconsistent with methods of enforcing violations of other regulations; (b) it is nearly impossible to fairly administer a waiver, compromise or other provision of this section; and (c) enforcement of liquidity requirements is counter-productive to good relationships with member institutions which lead to effective supervision of other matters.

The Board does not agree with the statement that it is nearly impossible to fairly administer waivers, compromises or other provisions of this section. Liquidity deficiency penalties are expressly authorized by Section 5A(c) of the Federal Home Loan Bank Act and serve as a powerful deterrent to violation of the liquidity regulations.

One respondent noted that the proposed system may have a severe retroactive impact, and strongly urged

that some transition period be considered. For example, associations are, under the present regulations, calculating reduction of liquid deficiencies on a quarterly distribution period basis. Under this system, any reduction has already been calculated for the final distribution period of 1979, i.e., 100% of the amount of net savings withdrawals occurring during the last three business days of September and the first ten calendar days of October were already applied to reduce any liquid deficiency at the end of the month of October, and one-half of that amount used to reduce any end-of-month deficiency in November. If the proposed system were to be effective in the middle of a distribution period, an association which had a net savings gain at the end of the second month of that period would not be able to reduce any liquidity deficiency by the amount permitted under present regulations. Thus, financial planning would be disrupted, and penalties previously unanticipated would be imposed.

The Board agrees with this comment, and the regulation has been modified accordingly. An institution may elect to complete the current quarterly interest distribution period using the old method, or change to the new system, whichever is more convenient and provides greater relief. The Board intends this new method of calculating the penalty reduction to be available for the month of December so that penalties may be reduced immediately. Furthermore, in calculating deficiencies for the first 3 months of 1980, members may use the old or new system, at their option. Beginning in April, the new system is required.

It was suggested by one respondent that members with a strong reserve position should be given the choice of averaging liquid deficiencies on a quarterly or semi-annual basis so that liquidity may be used without penalty when possible. Considering the purpose of the liquidity requirements, the Board does not consider it appropriate to permit institutions to meet them by averaging on a quarterly or semi-annual basis. Such averaging could result in institutions being in an unsatisfactorily illiquid position for a substantial period of time.

Several respondents were unsure of the meaning of certain references in the proposal, and asked for these clarifications:

(a) Is the allowed reduction for any month calculated on net savings withdrawals for the current or preceding month?

(b) In the following month, is the reduction one-half of the preceding month's allowed reduction?

(c) Was subparagraph (a)(2)(iii) intended to refer to "distribution period" or "month"?

Explanation of final amendment. Since several respondents asked for revision or clarification of the proposed changes, the Board believes it will be helpful to explain by example how the new rule works, and how it differs from the old rule.

Under the old rule, an institution would determine, each quarter, whether there were aggregate net savings withdrawals during the last three business days of the previous month and the first ten calendar days of the current month. Assuming that the institution had a liquidity deficiency, it could then be reduced by the amount of aggregate net savings withdrawals. In the second month of the quarter, one-half of that amount could be applied against any deficiency, regardless of its cause. There was, however, no relief for the third month.

The following illustration of the old rule assumes that there are three successive months of net savings withdrawals and, further, that there is a liquidity deficiency in each of those months. Under the old rule, the reduction would be as follows in each month.

	Net savings withdrawals	Net savings gains	Liquidity deficiency	Amount deficiency is reduced	Net liquidity deficiency
January	[1]$1,000,000		$1,000,000	$500,000	$500,000
February	1,000,000		1,000,000	250,000	750,000
March	1,000,000		1,000,000		1,000,000

[1]Net savings withdrawals for the first 10 calendar days and the preceding 3 business days aggregated $500,000.

Under the method adopted by the Board today, the monthly reduction would be figured as shown below, with all of each month's aggregate net savings withdrawals plus one-half of the previous month's withdrawals not recovered the following month being used to reduce the deficiency.

	Net savings withdrawals	Net savings gains	Liquidity deficiency	Amount deficiency is reduced	Net liquidity deficiency
January	$1,000,000		$1,000,000	$1,000,000	
February	1,000,000		1,000,000	1,500,000	
March	1,000,000		1,000,000	1,500,000	

In a month during which there is a net savings gain, no liquidity reduction is available, except that there would be a reduction of 50% of any net savings loss for the preceding month not recovered during the current month. This is illustrated below.

	Net savings withdrawals	Net savings gains	Liquidity deficiency	Amount deficiency is reduced	Net liquidity deficiency
January		$300,000	$1,000,000		$1,000,000
February	$500,000		1,000,000	$500,000	500,000
March		200,000	1,000,000	150,000	850,000

The Board finds that publication of this amendment for the 30-day notice period specified in 5 U.S.C § 553(d) and 12 CFR 508.14 prior to its effective date is unnecessary because immediate adoption relieves restriction and is in the public interest.

Accordingly, the Board amends paragraph (a) of 12 CFR 523.12 to read as set forth below.

1. Revise paragraph (a) of 12 CFR 523.12 to read as follows:

§ 523.12 Deficiencies and penalties.

(a) *Calculation of deficiency.*

* * * * *

(2) A member, other than an insurance company, may reduce any deficiency under subparagraph (a)(1) of this section as follows, provided that no such reduction may reduce a member's liquidity requirements below 4 percent of its liquidity base at the end of the immediately preceding month:

(i) *Old rule.* For the first month of a current distribution period, by the amount of its aggregate net withdrawals (excess of withdrawals over cash savings received) from withdrawable accounts during the last 3 business days of the immediately preceding month and the first 10 calendar days of the current month, and for the second month of the same distribution period, by one-half of such amount of aggregate net withdrawals.

(ii) *New rule.* For each month, by the amount of aggregate net withdrawals (excess of withdrawals over cash savings received) from withdrawable accounts during the month, and by one-half of the amount of the preceding month's aggregate net withdrawals not recovered.

(iii) *Effective Dates.* Reduction of any deficiency must be calculated under subdivision (a)(2)(i) for all months through November 1979. For all months beginning with December 1979 through and including March 1980, reduction may be calculated under either subdivision (a)(2)(i) or (a)(2)(ii). For all months beginning April 1980, reduction shall be calculated under subdivision (a)(2)(ii).

* * * * *

(Sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437; sec. 5A, 83 Stat. 401; 12 U.S.C. 1425a. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary,

[FR Doc. 79-39602 Filed 12-27-79; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 563

[No. 79-682]

Federal Savings and Loan Insurance Corporation Operations; Guidelines Concerning Director Interlocks—Disclosure Requirements

December 21, 1979

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board is currently considering the advisability of proposing to delete certain of its guidelines regarding the composition of an insured institution's board of directors because these guidelines appear to have been superseded by the Management Interlocks Act. Under the current rule, an institution not in conformity with the guidelines must come into compliance before the end of the audit period preceding its 1980 annual meeting or must file an Annual Report Form. This amendment, which is effective immediately, is intended to preserve the section 206 Management Interlocks Act "grandfather" rights of directors currently serving on the boards of insured institutions, while allowing the Board a one year period in which to propose, if warranted, the deletion of the guidelines, and to take final action on any proposal.

EFFECTIVE DATE: December 21, 1979.

FOR FURTHER INFORMATION, CONTACT: Kathleen Topelius, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 (202–377–6444).

SUPPLEMENTARY INFORMATION: The Board is currently studying the advisability of formally proposing to delete § 563.33(a)(5) of its Conflict of Interest regulations (12 CFR 563) because the prohibitions contained in the Interlocks Act (title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3201 *et seq.*)) appear to effectively supercede the (a)(5) guidelines which govern the composition of an insured institution's board of directors.

The Board is aware that a number of insured institutions have directors currently serving on their boards whose continued service after December 31, 1979, violates the § 563.33(a)(5) guidelines, thereby triggering disclosure under § 563.45 of the Insurance Regulations. Because the deletion of § 563.33(a)(5) is currently being studied, the Board believes that it would be inequitable and unnecessarily burdensome to require an insured institution to prepare, disseminate to its membership, and file an Annual Report Form in those cases where disclosure is triggered solely because the institution's board of directors was not in compliance with the (a)(5) guidelines at the end of the audit period immediately preceding the institution's 1980 annual meeting.

The Board has, therefore, amended § 563.45(b)(3)(i) to provide that an insured institution need not prepare an Annual Report Form for the audit period preceding its 1980 annual meeting if the sole trigger for disclosure was the institution's noncompliance with the guidelines set forth in § 563.33(a)(5). The amendment, which is effective immediately, is intended to allow an insured institution's management officials, whose service is grandfathered under section 206 of the Interlocks Act, to continue to serve the insured institution even though that continued service results in the institution's noncompliance with the (a)(5) guidelines. The amendment to § 563.45 will avoid the application of the disclosure requirements until the Board has had sufficient time to propose, if warranted, the deletion of § 563.33(a)(5), and to take final action on any proposed amendments before the end of 1980.

The Board has determined, in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. § 553(b)) and with § 508.11 of the Board's General Regulations (12 CFR 508.11), that notice and public procedure are impracticable. Without an immediate extension of time for compliance, many insured institutions that are not presently in conformity with § 563.33(a)(5) will be required to conform or to disclose prior to December 31, 1979, which is, for many insured institutions, the end of the annual audit period. Therefore, implementation of the amendment as a final rule is essential to avoid unnecessary disruption to the directorates of affected institutions while the advisability of a proposal to delete § 563.33(a)(5) is carefully evaluated. The Board has also determined that publication of this amendment for 30 days prior to its effective date, as specified in 5 U.S.C. section 553(d) and 12 CFR 508.14, is unnecessary for the same reason.

Accordingly, the Board hereby amends § 563.45 of the Rules and Regulations for Insurance of Accounts to read as follows:

§ 563.45 Disclosure.

* * * * *

(b) *Exemptions from paragraph (a).* Paragraph (a) shall not apply to an insured institution:

* * * * *

(3) If (i) the composition of the board of directors of such institution is in accordance with the guidelines set forth in § 563.33(a) as of the end of its audit period immediately preceding the annual meeting, except that (*a*) an institution whose directors are elected for three-year staggered terms need not be in compliance with the guidelines set forth in § 563.33 (a)(1), (a)(2), (a)(3), and (a)(4) until the end of the audit period immediately preceding its 1980 annual meeting; and (*b*) an institution need not be in compliance with the guidelines set forth in § 563.33(a)(5) until the end of the audit period immediately preceding its 1981 annual meeting;

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg.

Plan No. 3 of 1947, 12 FR 4891, 3 CFR, 1943–48 Comp., p. 1071).

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79-39503 Filed 12-27-79; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 563

[No. 79-681]

Insurance of Accounts; Amendments Relating to Acquisition Credit Subject to Deferral

December 21, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board has amended its accounting rules for institutions insured by the Federal Savings and Loan Insurance Corporation by increasing the level of loan acquisition fees that such institutions may take into current income. The Board believes this change is necessary to reflect the increased cost of mortgage loan originations since the rules were last amended in 1973. The amendments are applicable to loans closed on or after January 1, 1979.

EFFECTIVE DATE: December 21, 1979.

FOR FURTHER INFORMATION CONTACT: John R. Hall, Attorney, (202–377–6445), or Thomas F. Timmins, Deputy Director, Office of Examinations and Supervision (202–377–6545), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Paragraph (d) of § 563.23–1 of the Board's Rules and Regulations for Insurance of Accounts (12 CFR 563.23–1) provides that mortgage loan acquisition credits, defined in subparagraph 563.23–1(g)(3) as any consideration other than the average interest provided by the loan contract, must be accounted for in a deferred income account and be credited to income over a period of not less than ten years unless the loan is sold earlier. Subparagraph 563.23–1(g)(4) provides a deductible in the amount of the acquistion credit subject to deferral; the present deductible is the greater of: (1) $50, (2) two percent of the loan amount for construction loans, or (3) one percent of the loan amount for other loans, plus $200 if the institution's employees perform appraisal, attorney, or loan closing services for which no escrow fee is charged. The Board has determined that the maximum deductible should be increased for loans closed on or after January 1, 1979. The new deductible will be the greater of: (1) $50, (2) two and one-half percent of the loan amount for construction loans, or (3) two percent of the loan amount for other loans, plus $400 if the institution's employees perform appraisal, attorney, or loan closing services for which no escrow fee is charged.

The current limits, which were last revised in 1973, were intended to assure that acquisition credits are not used to distort current income figures. The Board believes, based on its experience since the limits were last revised, that the current limits are unnecessarily restrictive. In the Board's view, the revised limitations will continue to prevent overstating of current income, without unnecessarily restricting fair reflection of income earned during the loan origination process.

The change in regulations will result in larger flows of current income which should help the industry through the current and projected future period of depressed earnings. The Board's staff has projected that the change will increase net income (after taxes) from loan fees by 20%, or approximately $200 million in the first half of 1980.

Since the amendments relieve restriction, the Board finds that notice and public procedure are unnecessary under the provisions of 5 U.S.C. § 553(b) and 12 CFR 508.11, and finds that delay of effective date for 30 days after publication pursuant to 12 U.S.C. § 553(d) and 12 CFR 528.14 is unnecessary for the same reason.

Accordingly, the Federal Home Loan Bank Board hereby amends paragraph (g)(4)(i) and the first sentence of pararaph (g)(4)(ii) of § 563.23–1 to read as follows:

Subchapter D—Rules and Regulations for Insurance of Accounts

PART 563—OPERATIONS

§ 563.23–1 Premiums, charges, and credits with respect to mortgage loans; sale of real estate owned; and related items.

* * * * *

(g) *Definitions.* For the purpose of this section:

* * * * *

(4) The term "acquisition credit subject to deferral" means for loans closed on or after January 1, 1979, the amount of an acquisition credit in excess of

(i) The greater of:

(*a*) Fifty dollars, or

(*b*) Two and one-half percent of the amount of the loan, if the loan or commitment is for the purpose of construction, or

(*c*) Two percent of the amount of the loan, if the loan or commitment is for any other purpose; plus

(ii) Four hundred dollars, if, with respect to the loan, the insured institution uses its own employees to perform appraisal services or to perform attorney or closing functions for which no escrow fee is received.* * *

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79-39504 Filed 12-27-79; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 6]

Organization and Functions

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Due to extensive reorganization within the Small Business Administration, Part 101—Administration is revised as it pertains to organization, function, and listing of field offices.

DATE: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Amos B. Cheeseboro, Office of Personnel Services (202–653–6630).

SUPPLEMENTARY INFORMATION: Inasmuch as this Part sets forth the Agency's organization and procedures, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code.

Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, 13 CFR 101 is revised as set forth below.

A. Vernon Weaver,

Administrator.

Title 13, Code of Federal Regulations is amended by revising Part 101 to read as follows:

PART 101—ADMINISTRATION

Sec.

101.1 Purpose, function, general organization.
101.2 Organization and functions of the Central Office—Administrator.
101.2-1 Office of Equal Employment Opportunity and Compliance.
101.2-2 Office of Hearings and Appeals.
101.2-3 General Counsel.

Sec.
101.2–4 The Inspector General.
101.2–5 Chief Counsel for Advocacy.
101.2–6 National Advisory Councils (Staff).
101.2–7 Associate Deputy Administrator for Programs.
101.2–7a Associate Administrator for Finance and Investment.
101.2–7b Associate Administrator for Procurement Assistance.
101.2–7c Associate Administrator for Management Assistance.
101.2–8 Associate Administrator for Minority Small Business and Capital Ownership Development.
101.2–9 Associate Administrator for Policy, Planning, and Budgeting.
101.2–10 Associate Deputy Administrator for Support Services.
101.2–10a Assistant Administrator for Congressional and Legislative Affairs.
101.2–10b Assistant Administrator for Personnel Management.
101.2–10c Assistant Administrator for Data and Management Services.
101.2–10d Assistant Administrator for Public Communications.
101.3 Organization and Functions of Field Offices.
101.3–1 Listing of field offices.

Authority: Secs. 4 and 5, Pub. L. 65–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); Sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); 5(b)(11) Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

§ 101.1 Purpose, function, general organization.

(a) *Purpose.* To aid, counsel, assist, and protect the interests of small business concerns and to help victims of disasters.

(b) Functions.

(1) Procurement and technology assistance. To insure that a fair proportion of the total Government purchases and contracts or subcontracts for property and services for the Government be placed with small business enterprises by, among other things, certifying as to the competency of small business concerns to perform such contracts, or subletting contracts to small business concerns on which the Agency is prime contractor; to insure that a fair proportion of the total sales of Government property be made to small business enterprises; and to assure that small businesses obtain the benefit of Government sponsored research and development.

(2) *Management assistance.* To improve the management skills of owners, potential owners, and managers of small business concerns with direct action programs and through established channels of business relations; to provide technical and product assistance to small business concerns; and to inventory productive facilities of small business concerns.

(3) *Financial assistance.* To make loans to small business concerns and to victims of floods or other catastrophes, including loans to small business concerns suffering economic injury as a result of displacemnt by Federal construction, inability to process products for human consumption because of undetermined disease, and need to make changes in facilities or methods of operation because of various Federal laws imposing safety and health requirements; to make direct or band participation loans on the basis of certifications made by the Secretary of Commerce to assist firms, large and small, to adjust to changed economic conditions resulting from increased competition from imported articles; and to make loans to state and local development companies for purpose of assisting small business concerns.

(4) *Guaranteeing surety bonds.* To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment or performance bonds.

(5) *Small business investment companies.* To provide venture capital in the form of equity financing and long-term loan funds to small business concerns and provide advisory services to such concerns through small business investment companies; to license small business investment companies, regulate the operations of such companies, and purchase or guarantee the purchase of debentures from small business investment companies to supplement their capital requirements for the financing of small business concerns.

(6) *Advocacy of small business interests.* To protect the interests of small businesses as they may be adversely affected by activities of other parts of this chapter.

(7) *Further functional description.* The more detailed program functions of the Agency are set forth in other sections of this part and other parts of this chapter.

(c) *General organization.* (1) Management of the Small Business Administration is vested in an Administrator appointed by the President with the advice and consent of the Senate. The Administrator is authorized to appoint three associate administrators under the Small Business Act and one associate administrator under the Small Business Investment Act. The Administrator is authorized to appoint a Deputy Administrator who shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator. The Administrator is authorized, subject to the Civil Service and Classification Laws, to select, employ, appoint and fix the compensation of such officers, employees, attorneys and agents as shall be necessary to carry out the provisions of the Small Business Act and the Small Business Investment Act. Authority to the field offices flows from the Administrator to the Regional Administrators.

(2) The headquarters of the Small Business Administration is located at 1441 L Street N.W., Washington, D.C. 20416.

(d) *Applicable law.* (1) Loans made by SBA are authorized and executed pursuant to Federal programs adopted by Congress to achieve national purposes of the U.S. Government.

(2) Instruments evidencing a loan, obligation of security interest in real or personal property payable to or held by the Administration or the Administrator, such as promissory notes, bonds, guaranty agreements, mortgages, deeds of trust, and other evidences of debt or security shall be construed and enforced in accordance with applicable Federal law.

(3) In order to implement and facilitate these Federal loan programs, the application of local procedures, especially for recordation and notification purposes, may be utilized to the fullest extent feasible and practicable. However, the use of local procedures shall not be deemed or construed to be any waiver by SBA of any Federal immunity from any local control, penalty, or liability.

(4) Any person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, shall not be entitled to claim or assert any local immunity to defeat the obligation such party incurred in obtaining or assuring such Federal benefit or assistance.

§ 101.2 Organization and functions of the Central Office—Administrator.

(a) National Advisory Council—Small Business Administration. The National Advisory Council of the Small Business Administration is composed of representatives from each of the District Advisory Councils and Members-at-Large from each of the regions. These representatives are persons actively engaged in small business or finance, or in services or professions related to small business including the fields of labor, law, accounting, insurance, education, real estate, and the news media. These members, particularly qualified by their knowledge of an interest in small business, are able to contribute substantially to the Agency

and the small business community. All members are selected by the Administrator and serve at the pleasure of the Administrator without compensation. The council meets with and advises the Administrator on the development, execution, and evaluation of present or proposed SBA programs. All functions are purely advisory and all determinations of actions to be taken are made solely by the responsible SBA officials.

(b) Offices within the Office of the Administrator include:

(1) Office of Equal Employment Opportunity and Compliance
(2) Office of Hearings and Appeals
(3) General Counsel
(4) Inspector General
(5) Chief Counsel for Advocacy
(6) National Advisory Councils (Staff)

All officials heading the functions 101.2 through 101.2–10 are located in the Central Office in Washington, D.C. The Administrator is responsible to the President and Congress for exercising direction, authority and control over the Small Business Administration. The Administrator determines and approves all policies covering the programs to aid, counsel, assist and protect the interests of the Nation's small business concerns. The Administrator delegates responsibility and authority, except the authority to approve or disapprove: Pool loans; Applied research programs; and Defense production pools, as set forth in sections 7(a)(6), 9(d), and 11 of the Small Business Act, to the Deputy Administrator, associate Administrators, and other Central Office officials reporting directly. The administrator consults with Federal, State, and local agencies in behalf of small business interests in the national economy; reports to the President and Congress on Agency program accomplishments and problems; maintains as a responsibility of the office the activities related to equal employment opportunity within SBA, audits and investigations and formal review of size appeals cases; periodically evaluates the performance, accomplishments, and short-range and long-range planning goals of the Central Office officials reporting directly to him.

§ 101.2–1 Office of Equal Employment Opportunity and Compliance.

Develops and recommends policies concerning the Equal Employment Opportunity and Compliance (EEO&C) programs. Makes the final decision on discrimination complaints and orders corrective measures, except when otherwise specified by the Administrator; recommends disciplinary action when discriminatory practices are found. Develops plans, operating procedures, and standards to effectively strengthen and improve the Agency's civil rights, equal employment opportunity, and compliance programs and activities. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Serves as principal liaison with other Federal agencies and nonfederal organizations concerned with civil rights. Also serves as the Agency's equal employment opportunity officer, civil rights coordinator, and compliance officer. Directs, coordinates, and administers compliance programs and activities executed by Central Office staff. Provides advice, assistance, and support to the Administrator in relation to the EEO&C programs.

§ 101.2–2 Office of Hearings and Appeals.

Conducts administrative hearings and other proceedings in connection with appeals, grievances, and other disputes in the Small Business Administration. Hearings and other proceedings are held to adjudicate disputes, decide appeals, or recommend decisions pertaining to such matters as: SBIC enforcement proceedings; termination of 8(a) program participation; adjudication of complaints of discrimination, where the complainant is an applicant for, or recipient of assistance from SBA, or any other complainant with a complaint of discrimination covered by Parts 112 and 113 of SBA's Rules and Regulations, Title 13 C.F.R.: revocation of applicant representative's privilege to appear before SBA; size appeals; and personnel grievances (in their formal stage). Handles other such matters as may be assigned from time to time by the Administrator. Develops and implements Agency policies and procedures to effectively strengthen and improve dispute-related decision making in SBA. Consults with program and staff offices as necessary to fulfill assigned responsibilities. May recommend changes in existing regulations and laws to improve the process of dispute-related decision making within the Agency.

§ 101.2–3 General Counsel.

Develops plans, procedures, and standards for providing legal services in support of SBA program operations, including execution of loan closing and litigation activities by Agency counsel. Develops and recommends policies governing SBA legal functions and activities. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates legal program effectiveness, including onsite visits to evaluate field office performance. Analyzes and interprets legislation, regulations, and orders relating to the operation of the Small Business Administration. Advises the Administrator, Deputy Administrator, and all other SBA officials on the legal aspects of the development and execution of policies and programs. Negotiates with Federal agencies as to the legal aspects of matters pertaining to the responsibilities of SBA and drafts resultant agreements. Develops legal theories incorporated in requests to the Comptroller General or to other Federal agencies for decisions in matters of interest to small business. Provides legal counsel, advice, and assistance to Central Office officials in connection with financial, investment, administrative, technical, procurement and management assistance, and minority enterprise programs, and in the formation of defense production and research and development pools, in matters of Agency administration, and in connection with any other matter having legal implications for the Agency. Within approved policies, gives direct legal advise and assistance to the field offices and exercises technical supervisory responsibility with respect to legal functions in the field offices. Also, advises on eligibility of applicants for assistance from SBA. Advises with respect to servicing and liquidation of loans. Assists and participates with the Department of Justice in litigation arising from delinquent loans, and other SBA program activities. Prosecutes administrative proceedings pursuant to the Small Business Investment Act. Reviews legislative proposals affecting small business and develops recommendations for the Office of Management and Budget and congressional committees; prepares legislative proposals relating to SBA; and develops reports for congressional hearings or the Office of the President. Serves as Agency designee to the Administrative Conference of the United States. Serves as Chairperson of the Standards of Conduct Committee. Serves as legal advisor to the Size Appeals Board. Maintains liaison with the governmental and other agencies having activities related to the legal and advocacy functions of the Agency.

§ 101.2–4 The Inspector General.

To effectuate the Congressional intent underlying enactment of Public Law 95–452, which Act mandates the establishment of independent and objective offices within enumerated executive agencies to provide leadership and coordination and recommend policies designed to promote economy,

efficiency, effectiveness, and prevent and detect fraud and abuse in the administration of Agency programs and operations, the Office of the Inspector General shall; Develop and implement plans, procedures, and standards for the conduct, by that Office, of audits, investigations, and inspections relating to Agency programs, operations, personnel, and physical security; Report the findings of such audits, investigations, and inspections to appropriate Agency officials; which report shall include recommendations designed to assist in the development and implementation of measures to correct deficiencies noted in the programs and operations so reviewed; Monitor the nature, scope, and results of remedial or other action taken by Agency officials in response to such findings and recommendations and report to the Administrator and/or the Audit Committee on the status of such action and on the continuing existence of significant deficiencies requiring remedial action to ensure protection of the Agency's programs and operations; Review existing and proposed legislation and regulations relating to Agency programs and operations to determine their impact on the economy and efficiency of, or on the prevention and detection of fraud and abuse in, such programs and operations; Prepare on a semi-annual basis, and more frequently if necessary, a report for the Administrator and appropriate committees of Congress which shall include but not necessarily be limited to a description of significant deficiencies and abuses disclosed by the Inspector General's activities, the nature of the recommendations for corrective action made by that Office, the status of remedial or other action instituted by Agency officials on the basis of these findings and recommendations, and a summary of those criminal matters referred by the Inspector General directly to the Attorney General for further investigative or prosecutive action; Effect liaison with appropriate Federal, State, and local governmental agencies and non-governmental entities as may be necessary to meet office responsibilities as they relate to the economy, efficiency, integrity, and security of Agency programs and operations; and Initiate such other action as the Inspector General may deem to be reasonable and necessary in carrying out the office's responsibilities pursuant to Public Law 95–452 and regulations promulgated pursuant thereto.

§ 101.2-5 Chief Counsel for Advocacy.

Under the direction of the Administrator, directs the planning and development of government-wide public policies and administrative vehicles which enforce a nationwide program of advocacy of small business; serves as chief spokesman for such program; and carries out the mandate of Pub. L. 94–305. Responsible for ensuring that major government-wide policy directions enhance the economic viability of the largest possible number of small businesses. This includes direct management of the Women-in-Business program. Ensures that the end results of such policies and administrative procedures in furtherance of the statutory requirement include, but are not limited to the following: (a) expanding small business in such a way as to enhance equal employment opportunities; (b) working toward improving the tax structure in order to improve the viability and growth of small business; (c) addressing all major Federal functions impinging on small business with the proper guidance, direction, and instruction to assure a uniformity of purpose and approach which benefits small business and promotes or stimulates competition; and (d) developing approaches to the ways and means of educating and training existing and potential small business persons, and developing incentives for entrepreneurship which assure equality of access to such entrepreneurs. Works with all programs and all regions of SBA in assuring concerted and uniform policy interpretation and implementation. Directs the analysis of economic trends, the changing impacts of government expenditures and tax policies, and of government regulations on the growth of the small business sector in our economy; provides appropriate evaluation and assessment tools with which to measure successful implementation of the Advocacy effort. Serves on or is represented on and works with all members of the Administrator's Management Board to ensure exchange of information between the Office of Advocacy and the rest of SBA about programs and activities.

§ 101.2-6 National Advisory Councils (Staff).

Develops and recommends policy concerning the Advisory Council Program of the Agency. Implements approval Agency policy in this regard. Develops plans and procedures, including effective liaison with small business trade and professional associations, as well as those associations serving small business. Provides advice, assistance, and support to the Associate Deputy Administrator for Programs in relation to the Regional Advisory Councils. When appropriate, works with ADA/P in the utilization of field personnel in this regard. Plans, organizes, and participates in the meetings of National Advisory Councils. Participates with and assists through ADA/P, field personnel in the meetings of Regional Advisory Councils. Coordinates all resolutions adopted by all Advisory Councils for appropriate actions and replies. When appropriate, presents resolutions adopted by Regional Councils to the National Council for their consideration. Keeps Central Office officials informed of the activities of the Councils as they relate to their functional areas of responsibility. Assists and works with the AA/F&I or that officials designee for the Administrator's determination in planning, organizing, and participating in the meeting of the National Small Business Investment Company Advisory Council.

§ 101.2-7 Associate Deputy Administrator for Programs.

Develops plans, operating procedures, and standards to effect, strengthen, and improve the Agency's programs of financial, procurement, and management assistance designed to meet the existing and potential needs of the small business community by increasing the coordination between programs in the delivery of SBA services in the field. Develops and recommends policies concerning the Agency's programs of financial, management, and procurement assistance which include all aspects of the lending programs, procurement/contracting opportunities, and consultant services to individual small businesses. Promotes the effective and efficient operations of these programs to enhance the assistance provided to the small business community by assuring that these programs work in concert. Provides direction to field offices for program implementation and field service delivery of programs. Represents the Administrator as delegated in negotiations with other Government agencies whose activities relate to these program areas. Provides direction and emphasis in the coordination of the Agency's financial, management, and procurement assistance programs to achieve the overall Agency objectives. Plans, arranges, and participates in periodic high level conferences between SBA Central and field office officials on matters involving program or policy issues. Conducts reviews and evaluations of regional and district office operations in management of all

Agency program areas. Coordinates reviews with and communicates findings to Assistant and Associate Administrators not reporting directly to ADA/P. Formulates a system of goals, policies, procedures, and regulations for regional management that reflects and implements the basic objectives and goals of the Agency. Coordinates and communicates field goals for all programs and Agency activities. Reviews priorities, objectives, and program targets established by program offices. Recommends the ordering of integrated priorities, consistent with national goals. Ensures proper coordination and liaison with members of SBA Central Office Management Board for proper development, implementation, and field delivery of specified program activities.

§ 101.2-7a Associate Administrator for Finance and Investment.

Develops plans, operating procedures, and standard to effectively strengthen and improve the Agency's finance and investment programs designed to meet the existing and potential needs of the small business community. Develops and recommends policies concerning the financial assistance programs, including related activities of liquidation and disposal. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Plans, directs, and administers the small business investment company (SBIC) and 301(d) programs, including licensing, lending, and regulations to effectively strengthen and improve the Agency's programs of venture capital assistance to small businesses. Provides technical advice, assistance, and support to the Associate Deputy Administrator for Programs relating to finance and investment program matters. Represents the Administrator as specifically delegated in negotiations with other Government agencies whose activities relate to the finance and investment program area. Plans, directs, and administers the Agency's disaster operations through contingency planning, administration during the disaster, and disaster maintenance. Recommends physical and product disaster declarations to the Administrator. Maintains liaison with other Government agencies and individual Congressmen and committee staff members relating to the disaster program. Serves as a member of the Size Appeals Board.

§ 101.2-7b Associate Administrator for Procurement Assistance.

Develops plans, operating procedures, and standards to effectively strengthen, and improve the Agency's procurement assistance programs, which includes Government property sales assistance, to meet the existing and potential needs of the small business community. Develops and recommends policies pertaining to the procurement assistance mission of the Agency. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Promotes nationwide the Agency's procurement assistance programs to increase the participation of small business concerns in Government procurement awards and sales of Government property. Provides technical advice, assistance, and support to the Associate Deputy Administrator for Programs relating to procurement assistance matters. Represents the ADA/P in negotiations with other Federal agencies whose activities relate to Procurement Assistance program areas. Serves as a member of the Size Appeals Board. Operates as Small Business conduit for technology advancement.

§ 101.2-7c Associate Administrator for Management Assistance.

Develops and recommends policies concerning the management assistance and international trade programs. Develops plans, operating procedures, and standards to effectively strengthen and improve the Agency's management information and training, management counseling, and management contracts, other than 7(j), programs to meet existing and potential needs of the small business community. Develops plans, operating procedures, standards, goals, and objectives for providing management assistance through volunteer or contract activity, including marketing analyses, feasibility and/or engineering studies to applicant-borrowers, COC, and 8(a) recipients. Develops and recommends policies concerning Agency use of volunteer management assistance groups, such as SCORE (Service Corps of Retired Executives) and ACE (Active Corps of Executives) and maintains active liaison on behalf of SBA with such groups. Administers the SCORE, ACE, and other volunteer program activities on an Agency-wide basis, with accent on recruitment and expansion of these programs in connection with borrower-related management assistance. Develops and recommends policies and procedures which emphasize the effectiveness of management assistance to borrowers. Develops and recommends policies and procedures for the administration of the Small Business Institute Program. Develops and implements policies to carry out the Agency's International Trade Program. Develops and recommends policies and procedures to carry out the Agency's Small Business Development Center Program. Provides technical advice, assistance, guidance, and support to Central Office officials with respect to the management assistance programs. Maintains liaison with other SBA organizational components and other Federal agencies on matters relating to the management assistance program.

§ 101.2-8 Associate Administrator for Minority Small Business and Capital Ownership Development.

Develops and recommends plans and procedures for use and administration of the Agency's 7(j) program pursuant to Public Law 95-507 to foster small business ownership by individuals that own and control limited productive capital. Develops, recommends, and promotes policies for use and administration of contracts or grants providing financial assistance to public or priviate organizations who furnish technical and management assistance to individuals or small business concerns eligible for assistance under the small business, captial ownership development, and economic opportunity loan programs. Confers with top representatives of industry, trade associations, local government, and community action groups to enlist their substantial participation and involvement in the MSB&COD program. Promotes their cooperation in the development of minority enterprises and entrepreneurships in the disadvantaged areas. Negotiates basic agreements with industries for establishment of local outlets and franchises and for the provision of management and technical assistance and other types of support. Establishes procedures and policies for a continuing surveillance and evaluation program for MSB&COD activities, including the 8(a), 7(j), and other MSB&COD operations in regional and district offices. The program also includes monitoring and evaluating the operations of SBA and other programs as these operations affect MSB&COD activities and, the preparation of comprehensive reports to the AA/MSB&COD. Establishes standards and promotes a program of incentives and assistance to businesses (placing subcontracts with such small businesses) that will aid in the training and upgrading of potential subcontractors or other small business

concerns eligible for assistance under sections 7(i), 7(j), 8(a), and 8(d) of the Small Business Act, as amended, because of ownership and control by socially and economically disadvantaged individuals. Establishes standards for providing management, technical and financial services as may be necessary to 8(a) program participants as set forth in 7(j)(10) of the Small Business Act, as amended. Develops standards for selection of projects eligible for Agency funding, assuring statutorily-required preference for projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and 8(a) eligible small businesses and determined the appropriate use of the different types of financial assistance, i.e., by grants, contracts, or agreements, as required by section 7(j) of the Small Business Act, as amended, Serves in this capacity, in cooperation with the Associate Administrator for Procurement Assistance (AA/PA), Associate Administrator for Finance and Investment (AA/F&I), and the Assistant Administrator for Management Assistance (AA/MA) at other interagency meetings involving negotiations with Federal agencies whose activities relate to the MSB–COD programs. Confers with top representatives of industry, trade associations, local government, and community action groups to enlist their substantial participation and involvement in the MSB&COD program. Promotes their cooperation in the development of minority enterprises and entrepreneurships in the disadvantaged areas. Negotiates basic agreements with industries for establishment of local outlets and franchises and for the provision of management and technical assistance and other types of support. Coordinates with and invites participation by AA/PA in meetings and conferences that include representatives of manufacturing and construction industries. Works with the AA/PA in the development of policies and procedures governing the combined MSB–COD and PA effort to involve minorities in the manufacturing, construction and related service industries. Maintains liaison and cooperation with the Committee on Small Business and Minority Business Ownership regarding placement of subcontracts with small business concerns located in areas with high concentrations of unemployed or low-income individuals, with small businesses owned by low-income individuals and with small businesses eligible to receive contracts under the 8(a) program.

§ 101.2–9 Associate Administrator for Policy, Planning, and Budgeting.

Coordinates the development of Agency policy, plans, programs, goals, and objectives as they relate to planning, policy, and budgeting. As the principal planning officer of the Agency, develops and directs the preparation of Agency program memoranda as required by the Office of Management and Budget and coordinates with program offices in the developing and maintaining of the SBA Five-Year Plan. Develops policies, plans, systems, and procedures to effectively strengthen and improve the planning and program evaluation functions of the Agency and all of its program activities. Directs and ensures the conduct of economic, cost benefit, program analysis, and special studies of Agency activities to provide the Administrator and program managers with alternative courses of action and policy. Directs the development of and recommends new and changed size standards for all SBA programs. Is responsible for the determination and interpretation of the SBA size standards and serves as a Member of the Size Appeals Board. Conducts studies, in cooperation with program offices, involving across-the-board investigations of SBA programs to measure their effectiveness in terms of costs, benefits, and other considerations. Serves as the central analytical staff to review and evaluate, in conjunction with appropriate program offices, evaluation studies submitted to the Administrator. Represents the Administrator in negotiations with the Office of Management and Budget, Congressional Appropriations Committees, GAO, Treasury Department, and other agencies on budgeting, accounting, and fiscal matters. Responsible to the Administrator for the Agency's overall budgeting, accounting, and fiscal activities.

§ 101.2–10 Associate Deputy Administrator for Support Services.

Develops plans, systems, procedures, and standards for the effective coordination of the Agency's personnel management services, data and management services, congressional and legislative affairs, and public communications programs. Develops goals and objectives for the above Agency program and reviews and evaluates their effectiveness. Guides the development of systems and evaluative techniques to increase the productivity of these programs and the reduction in unnecessary administrative procedures. Directs the establishment and development of coordinated management information systems to assure that effective and efficient services are being provided to the small business community. Directs the Agency's efforts in implementing, not only the letter but the intent, of the Civil Service Reform Act, including revision of personnel systems and overall increase in management authority and responsibility. Directs the Congressional and Legislative Affairs programs to develop, not only increased congressional awareness of the Agency's objectives, but also increased sensitivity of Agency officials to the needs of the Congress. Represents the Administrator, as delegated, in negotiations with other Government agencies whose activities relate to these program areas.

§ 101.2–10a Assistant Administrator for Congressional and Legislative Affairs.

Develops and recommends plans, procedures, and standards to effectively strengthen and improve the Congressional relations and legislative affairs programs of the Small Business Administration. Develops Congressional and legislative affairs program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Provides advice, assistance, and support to the Administrator and other Central Office officials relative to the Congressional and legislative affairs programs. Serves as liaison with Members of Congress, Congressional Committees, Commissions, and Executive Agencies in relation to program matters which relate to Congressional or legislative affairs as they affect the SBA. Keeps the Administrator and key officials of the Agency informed of the activities of Congressional Committees as they relate to the programs and activities of SBA. Assures timely and proper submission to Congress of legislative proposals affecting small business. In this regard, coordinates with Congressional Committees regarding dates and witnesses necessary to hearings on new or existing legislation. Ensures coordination of all Congressional testimony with the Chief Counsel for Advocacy, other appropriate program officials, and the Office of the General Counsel. Oversees responsibility for commenting on legislation (other than that prepared by SBA or OMB) and is responsible for final assessment of all Agency comments before submission to the Administrator on such legislation.

Maintains knowledge, through liaison with Congress, of all pending legislation which will affect small business. Coordinates the preparation of testimony and later responses on all legislation affecting SBA, and that needed in the case of oversight, budgetary, and all other hearings.

Maintains liaison with the Office of Management and Budget regarding Administration clearance of Agency testimony, position, and comments concerning legislation which affects the SBA.

§ 101.2-10b Assistant Administrator for Personnel Management.

Develops and recommends policies concerning the personnel programs and related activities. Develops plans, procedures, and standards to effectively strengthen and improve the Agency's personnel program, including position classification, recruitment, selection, placement, promotion, separation, pay and wage administration, labor-management relations, performance evaluation and incentives, grievances and appeals, conduct and discipline, training and career development, personnel records management, employee services, and safety. Plans, directs, coordinates, and executes Agency-wide personnel management program reviews. Provides technical advice, assistance, and support to the ADA/SS and other Central Office Officials relating to the personnel program. Reviews and processes all field office personnel actions requiring Central Office approval. Maintains liaison with the Office of Personnel Management in matters relating to the development, interpretation, and application of personnel regulations and procedures. Develops, plans, and establishes standards to provide for effective analysis and improvement of the Agency organization. Maintains an organizational plan which describes the structure and functions of the organizational units and the location and geographical responsibilities of the field offices, etc. Directs the conduct of organizational studies as requested by the Administrator or other top management officials of SBA, or on a continuing basis as necessitated by changes in staffing requirements and/or shifts in program emphasis or direction. Maintains a personnel information system. Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness. Coordinates and administers the Central Office fund drives.

§ 101.2-10c Assistant Administrator for Data and Management Services.

Develops plans, systems, procedures, and standards for effective implementation of data management and management services programs, including emergency preparedness activities. Develops data management and information systems and procedures to effectively strengthen and improve the planning, program evaluation, loan accounting, management assistance, procurement assistance, minority small business, and internal administrative accounting and personnel functions of the Agency. Responsible for development of plans, operating procedures, and standards to effectively strengthen and improve the provision and management of data processing, data communications, computer systems analysis and management science services within SBA. Represents the Associate Deputy Administrator for Support Services as delegated, in negotiations with other Government agencies on matters relating to office programs and activities, and develops goals and objectives for Agency management support and data management activities. Reviews and evaluates their effectiveness.

§ 101.2-10d Assistant Administrator for Public Communications.

Develops plans, operating procedures, and standards to improve and present the Agency's public communications efforts. Coordinates field implementation of these efforts through Assistant Regional Administrators for Public Affairs and Communication (ARAPACs) and field Public Information Officers (PIOs). Develops and recommends public communications program goals and objectives. Reviews and evaluates program effectiveness. Establishes and maintains liaison with the news media, trade associations, chambers of commerce, and similar groups to promote their involvement in informing the public about the contributions of, and opportunities in, small business, and agency policies, programs, and objectives. Directs dissemination of information to print and electronic media about the activities, plans, policies, and actions of the Agency to keep the general public, and especially the small business community, fully informed. Directs the preparation and issuance of news releases, statements, pamphlets, and other informational materials. Develops and recommends policies governing Agency audio-visual, graphic, photogaphic, and typesetting activities. Directs the preparation of speeches for the Administrator and other key SBA officials, and provides a continuous flow of information to Management Board members. Directs and plans news conference held by the Administrator and other Management Board officials, and background briefings for the media by Agency officials. Directs development of Agency guidelines for making information and/or records available for public use in conformance with the Freedom of Information Act and Privacy Act. Directs preparation of the Agency's annual report to the President and Congress; acts as Agency historian. Provides information and assistance to Assistant Regional Administrators for Public Affairs and Communication regarding the public communications efforts of the Agency. Directs implementation of internal communications effort, including dissemination of employee newsletter and videotaped educational and information materials. Directs orientation program for visitors to the Central Office through which international and domestic visitors are supplied with information about the operation and management of SBA programs. Directs program to respond to general inquiries (written, telephonic, or in person) from the public.

§ 101.3 Organization and functions of the Field Offices.

(a) *Regional office.* An SBA office, headed by a regional administrator, it is the principal field office of the Agency, responsible and responsive to the Central Office. The city locations and geographical boundaries of each of the 10 regional offices were designated by the President in a statement on May 2, 1969. Such office exercises full authority and supervisory responsibility for: (1) The execution of all field activities within the region; (2) supervision of all district offices within the region.

(b) *District office.* An SBA office headed by a district director, located in a city designated by the Administrator within a defined, limited, and contiguous geographical area within the region. Such office is responsible and responsive to the regional office for the region in which it is located. Except for restrictions based on delegations of authority, the district office has full authority and supervisory responsibility for: (1) The execution of all field activities within the district boundaries; (2) supervision of all branch offices and post-of-duty stations located within the district boundaries; and (3) providing subordinate branch offices and post-of-duty stations within the technical capability necessary to execute assigned programs.

(c) *Branch office.* An SBA office headed by a branch manager, located in a city designated by the Administrator within a defined, limited, contiguous geographic area, within a district. Such office is directly responsible and responsive to the district office within whose boundaries it is located. It executes one or more elements of the business or disaster loan programs and has limited authority for program execution.

(d) *Post-of-duty station.* An SBA office headed by an officer-in-charge, located in a city designated by the Administrator within a district. Such office is directly responsible and responsive to the district office within whose boundaries it is located. It performs tasks required to promote and support the business and disaster loan programs and procurement and management assistance activities. It has no authority for program execution.

§ 101.3-1 Listing of field offices.

(a) *Region I.* Regional Office, 60 Batterymarch Street, Boston, MA 02110. Has jurisdiction over the following district offices and posts-of-duty:

(1) 150 Causeway Street, Boston, MA 02114. Serves Massachusetts.

(2) 302 High Street, Holyoke, MA 01050 (post-of-duty). Serves the following counties in Massachusetts: Berkshire, Franklin, Hampden, and Hampshire.

(3) 40 Western Avenue, Augusta, ME 04330. Serves Maine.

(4) 55 Pleasant Street, Concord, NH 03301. Serves New Hampshire.

(5) One Financial Plaza, Hartford, CT 06103. Serves Connecticut.

(6) 87 State Street, Montpelier, VT 05602. Serves Vermont.

(7) 40 Fountain Street, Providence, RI 02903. Serves Rhode Island.

(b) *Region II.* Regional Office, 26 Federal Plaza, New York, NY 10007. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 26 Federal Plaza, New York, NY 10007. Serves the following counties in New York: Bronx, Delaware, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

(2) 401 Broad Hollow Road, Melville, NY 11747 (post-of-duty). Serves the following counties in New York: Nassau and Suffolk.

(3) Chardon and Bollivia Streets, Hato Rey, PR 00918. Serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

(4) Veterans Drive, St. Thomas, VI. 00801 (post-of-duty). Serves the U.S. Virgin Islands.

(5) 970 Broad Street, Newark, NJ 07102. Serves New Jersey.

(6) 1800 East Davis Street, Camden, NJ 08104 (post of duty). Serves the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.

(7) 100 South Clinton Street, Syracuse, NY 13260. Serves the following counties in New York: Allegany, Albany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming, and Yates.

(8) 111 West Huron Street, Buffalo, NY 14202 (branch office). Serves the following counties in New York: Allegany, Cattaraugus, Chautauqa, Erie, Genesee, Niagara, Orleans, Wyoming.

(9) 180 State Street, Elmira, NY 14901 (branch office). Serves the following counties in New York: Broome, Chemung, Schuyler, Steuben, Tioga, and Tompkins.

(10) 99 Washington Avenue, Albany, NY 12210 (post-of-duty). Serves the following counties in New York: Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington.

(11) 100 State Street, Rochester, NY 14614 (post-of-duty). Serves the following counties in New York: Livingston, Monroe, Ontario, Seneca, Wayne, and Yates.

(c) *Region III.* Regional Office, 231 St. Asaphs Rd., Bala Cynwyd, PA 19004. Has jurisdiction over the following district and branch offices:

(1) 231 St. Asaphs Rd., Bala Cynwyd, PA 19004. Serves Delaware and the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

(2) 100 Chesnut Street, Harrisburg, PA 17101 (branch office). Serves the following counties in Pennsylvania: Adams, Clinton, Cumberland, Dauphin, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Potter, Snyder, Tioga, Union, and York.

(3) 20 North Pennsylvania Avenue, Wilkes-Barre, PA 18702 (branch office). Serves the following counties in Pennsylvania: Bradford, Carbon, Columbia, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne, and Wyoming.

(4) 844 King Street, Wilmington, DE. 19801 (branch office). Serves Delaware.

(5) 8600 LaSalle Road, Towson, MD 21204. Serves Maryland, except the counties of Montgomery and Prince Georges.

(6) 109 North Third Street, Clarksburg, WV 26301. Serves West Virginia.

(7) Charleston National Plaza, Charleston, WV 25301 (branch office). Serves the following counties in West Virginia: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Roane, Summers, Wayne, Webster, Wirt, and Wyoming.

(8) 1000 Liberty Avenue, Pittsburgh, PA 15222. Serves the following counties in Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntington, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

(9) 400 North Eighth Street, Richmond, VA 23240. Serves Virginia, except the counties of Arlington, Fairfax, and Loudoun.

(10) 1030 Fifteenth Street, NW., Washington, DC 20416. Serves the District of Columbia, the Maryland counties of Montgomery and Prince Georges, and the Virginia counties of Arlington, Fairfax and Loudoun.

(d) *Region IV.* Regional Office, 1375 Peachtree Street, NE., Atlanta, GA 30309. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 1720 Peachtree Street, NW., Atlanta, GA 30309. Serves Georgia.

(2) 908 South 20th Street, Birmingham, AL 35205. Serves Alabama.

(3) 230 S. Tryon Street, Charlotte, NC 28202. Serves North Carolina.

(4) 215 South Evans Street, Greenville, NC 27834 (post-of-duty). Serves the following counties in North Carolina: Beaufort, Bertie, Brunswick, Camden, Carteret, Currituck, Chowan, Columbus, Craven, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Nash, New Hanover, Onslow, Pamlico, Perquimans, Pasquotank, Pitt, Pender, Tyrell,

Washington, Wayne, Wilson, and Northampton.

(5) 1835 Assembly Street, Columbia, SC 29201. Serves South Carolina.

(6) 100 West Capitol Street, Jackson, Miss. 39201. Serves Mississippi.

(7) 111 Fred Haise Blvd., Biloxi, Miss. 39530 (branch office). Serves the following counties in Mississippi: Forest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Stone.

(8) 400 West Bay Street, Jacksonville, FL 32202. Serves the following counties in Florida: Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Putnam, Santa Rosa, St. Johns, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

(9) 600 Federal Place, Louisville, KY 40201. Serves Kentucky.

(10) 2222 Ponce de Leon Blvd., Coral Gables, FL 33134. Serves the following counties in Florida: Brevard, Broward, Charlotte, Collier, Dade, De Soto, Florida Keys, Glades, Hardee, Hendry Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Pasco, Pinellas, Polk, St. Lucie, and Sarasota.

(11) 700 Twigs Street, Tampa, FL 33602 (post-of-duty). Serves the following counties in Florida: Hillsborough, Pinellas, Polk, and Pasco. (Circuit rider to Manatee and Hendry).

(12) 404 James Robertson Parkway, Nashville, TN 37219. Serves Tennessee.

(13) 502 Gay Street, Knoxville, TN 37902 (branch office). Serves the following counties in Tennessee: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Clocke, Cumberland, Fentress, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, and Washington.

(14) 167 North Main Street, Memphis, TN 38103. Serves the following counties in Tennessee: Fayette, Hardeman, Haywood, Lauderdale, Shelby, Tipton.

(d) *Region V.* Regional Office, 219 South Dearborn Street, Chicago, IL 60604. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 219 South Dearborn Street, Chicago, IL 60604. Serves Illinois.

(2) One North, Old State Capital Plaza, Springfield, IL 62701 (branch office). Serves the following counties in Illinois: Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Washington, Wayne, White, Williamson, and Woodford.

(3) 1240 East Ninth Street, Cleveland, OH 44199. Serves the following counties in Ohio: Ashtabula, Carroll, Columbiana, Cuyahoga, Defiance, Erie, Fulton, Geauga, Harrison, Henry, Huron, Jefferson, Lake, Loraine, Lucas, Mahoning, Medina, Ottawa, Portage, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Wayne, Williams, and Wood.

(4) 85 Marconi Boulevard, Columbus, OH 43215. Serves the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton, Crawford, Drake, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot.

(5) 550 Main Street, Cincinnati, OH 45202 (branch office). Serves the following counties in Ohio: Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Montgomery, Preble, and Warren.

(6) 477 Michigan Avenue, Detroit, MI 48226. Serves Michigan.

(7) 540 W. Kaye Avenue, Marquette, MI 49855 (branch office). Serves the Upper Penninsula of Michigan.

(8) 575 North Pennsylvania Street, Indianapolis, IN 46204. Serves Indiana.

(9) 212 East Washington Avenue, Madison, WI 53703. Serves Wisconsin.

(10) 517 East Wisconsin Avenue, Milwaukee, WI 53202 (branch office). Serves the following counties in Wisconsin: Dodge, Fond du Lac, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha.

(11) 500 South Barstow Street, Eau Claire, WI 54701 (post-of-duty). Serves the following counties in Wisconsin: Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vilas, and Washburn.

(12) 12 South Sixth Street, Minneapolis, MN 55402. Serves Minnesota.

(e) *Region VI.* Regional Office, 1720 Regal Row, Dallas TX 75235. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 1100 Commerce Street, Dallas, TX 75242. Serves the following counties in Texas: Anderson, Archer, Baylor, Bell, Bosque, Bowie, Brown, Callahan, Camp, Cass, Cherokee, Clay, Coleman, Collin, Commanche, Cooke, Corywell, Dallas, Delta, Denton, Eastland, Ellis, Erath, Falls, Fannin, Franklin, Freestone, Grayson, Gregg, Hamilton, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Jack, Johnson, Kaufman, Lamar, Limestone, McLennan, Marion, Mills, Montague, Morris, Nacogdoches, Navarro, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shackelford, Shelby, Smith, Somervel, Stephens, Tarrant, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, and Young.

(2) 100 South Washington Street, Marshall, TX 75670 (post-of-duty). Serves the following counties in Texas: Bowie, Cass, Gregg, Harrison, Marion, Panola, Rusk, Shelby, Upshur.

(3) 5000 Marbel Avenue, NE., Albuquerque, NM 87110. Serves New Mexico, except the sections of the Navajo Indian Reservation and the Ute Mountain Indian Reservation in New Mexico.

(4) 500 Dallas Street, Houston, TX 77002. Serves the following counties in Texas: Angeline, Austin, Brazoria, Brazos, Burleson, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Leon, Liberty, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Trinity, Tyler, Waller, Walker, Washington, and Warton.

(5) 611 Gaines Street, Little Rock, AR 72201. Serves Arkansas.

(6) 222 East Van Buren Street, Harlingen, TX 78550. Serves the following counties in Texas: Aransas, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Willacy, and Zapata.

(7) 3105 Leopard Street, Corpus Christi, TX 78408 (branch office). Serves the following counties in Texas:

Aransas, Brooks, Kleberg, Nueces, and San Patricio.

(8) 1205 Texas Avenue, Lubbock, TX 79401. Serves the following counties in Texas: Andrews, Armstrong, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crane, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Glascock, Gray, Hale, Hall, Hansford, Hardenman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Jones, Kent, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Midland, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, Scurry, Sherman, Sterling, Stonewall, Swisher, Taylor, Terrell, Terry, Upton, Ward, Wheeler, Winkler, and Yoakum.

(9) 4100 Rio Bravo, El Paso TX 79902 (branch office). Serves the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, and Terrell.

(10) 200 NW. 5th Street, Oklahoma City, OK 73102. Serves Oklahoma.

(11) 616 South Boston Street, Tulsa, OK 74119 (post-of-duty). Serves the following counties in Oklahoma: Adair, Cherokee, Craig, Creek, Delaware, Haskell, La Flore, Latimer, Mayes, McIntosh, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Rogers, Sequoyah, Tulsa, Wagoner, and Washington.

(12) 1001 Howard Avenue, New Orleans, LA 70113. Serves Louisiana.

(13) 500 Fannin Street, Shreveport, LA 71101 (post-of-duty). Serves the following parishes in Louisiana: Bienville, Bossier, Caddo, Caldwell, Catahoula, Clairborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Madison, Moorehouse, Natchitoches, Quachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, and Winn.

(14) 727 East Durange Street, San Antonio, TX 78206. Serves the following counties in Texas: Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Burnet, Caldwell, Calhoun, Comal, Concho, Crockett, De Witt, Dimmit, Edwards, Fayette, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Irion, Jackson, Karnes, Kendall, Kerr, Kimble, Kinney, La Salle, Lampasas, Lavaca, Lee, Live Oak, Llano, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Real, Refugio, San Saba, Schleicher, Sutton, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Williamson, Wilson, and Zavala.

(15) 300 East Eighth Street, Austin, TX 78701 (post-of-duty). Serves the following counties in Texas: Bastrop, Blanco, Burnet, Caldwell, Fayette, Gillespie, Hays, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, and Williamson.

(f) Region VII. Regional Office, 911 Walnut Street, Kansas City, MO 64106. Has jurisdiction over the following district offices:

(1) 11150 Grande Avenue, Kansas City, MO 64106. Serves the following counties in Kansas and Missouri: Kansas: Allen, Anderson, Atchison, Bourbon, Brown, Cherokee, Coffey, Crawford, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Labette, Leavenworth, Linn, Marshall, Miami, Montgomery, Nemaha, Neosho, Osage, Pottawatomie, Shawnee, Wilson, Woodson, and Wyandotte. Missouri: Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Vernon, Webster, Worth, and Wright.

(2) 210 Walnut Street, Des Moines, IA 50309. Serves Iowa.

(3) Nineteenth and Farnum Streets, Omaha, NE 68102. Serves Nebraska, except the portion of the Pine Ridge Indian Reservation in Nebraska.

(4) One Mercantile Center, St. Louis MO 63101. Serves the following counties in Missouri: Andrain, Bollinger, Boone, Butler, Callaway, Camden, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Macon, Madison, Maries, Marion, Miller, Mississippi, Monroe, Montgomery, Moniteau, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, St. Louis, St. Louis City, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Warren, Washington, and Wayne.

(5) 110 East Waterman Street, Wichita, KS 67202. Serves the following counties in Kansas: Barber, Barton, Butler, Chase, Chautaugua, Cheyenne, Clark, Clay, Cloud, Commanche, Cowley, Decatur, Dickinson, Edwards, Elk, Ellis, Ellsworth, Finey, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Lane, Lincoln, Logan, Lyon, McPherson, Marion, Meade, Mitchell, Morris, Morton, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Sedgwick, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Webaunsee, Wallace, Washington, and Wichita.

(g) *Region VIII.* Regional Office, 1405 Curtis Street, Denver, CO 80202. Has jurisdiction over the following district and branch offices:

(1) 721 Nineteenth Street, Denver, CO 80202. Serves Colorado, except the section of the Navajo Indian Reservation in Colorado.

(2) 100 East B Street, Casper, WY 82602. Serves Wyoming.

(3) 657 Second Avenue, North, Fargo, ND 58108. Serves North Dakota.

(4) 301 South Park Avenue, Helena, Montana 59601. Serves Montana.

(5) 125 South State Street, Salt Lake City, UT 84138. Serves Utah and the portion of the Goshute Indian Reservation in Nevada.

(6) 101 South Main Avenue, Sioux Falls, SD 57102. Serves South Dakota and the portion of the Pine Ridge Indian Reservation in Nebraska.

(7) 515 Ninth Street, Rapid City, SD 57701 (branch office). Serves the following counties in South Dakota: Butte, Custer, Fall River, Lawrence, Meade, Pennington, and Shannon.

(h) *Region IX.* Regional Office, 450 Golden Gate Avenue, San Francisco, CA 94102. Has jurisdiction over the following district offices, branch offices, and posts-of-duty:

(1) 211 Main Street, San Francisco, CA 94105. Serves California, except the counties of Imperial, Inyo, Kern (East Pt.), Lassen, Los Angeles, Modoc, Mono, Orange, Riverside, Santa Barbara, San Bernadino, San Diego, San Luis Obispo, and Ventura.

(2) 1515 Clay Street, Oakland, CA 94612 (post-of-duty). Serves the following counties in California: Alameda, Contra Costa, and Solano.

(3) 1229 N Street, Fresno, CA 93712 (branch office). Serves the following counties in California: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern (west part), Kings, Madera, Mariposa, Merced, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, Shaster, Sierra, Siskiyou, Stanislaus, Sutter, Tulare, Tuolumne, Tehama, Trinity, Yuba, and Yolo.

(4) 2800 Cottage Way, Sacramento, CA 95825 (post-of-duty). Serves the following counties in California: Amador, Butte, Calaveras, Colusa, Glenn, Nevada, Placer, Plumas,

Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yuba, and Yolo.

(5) 300 Ala Moana, Honolulu, HI 96850. Serves Hawaii and American Samoa.

(6) Pacific Daily News Building, Agana, Guam 96910 (branch office). Serves Guam and the Trust Territory of the Pacific Islands.

(7) 301 E. Stewart, Las Vegas, NV 89101. Serves Nevada and the California counties of Inyo, Lassen, Modoc, and Mono except the Fort Mohave Indian Reservation, the Duck Valley Indian Reservation, and the Goshute Indian Reservation. Additionally, serves the Fort McDermott Indian Reservation in Oregon.

(8) 50 South Virginia Street, Reno NV 89505 (post-of-duty). Serves the following counties in Nevada and California: Nevada: Carson, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Warshoe, White Pine, and Storey. California: Lassen, and Modoc.

(9) 350 S. Figueroa Street, Los Angeles, CA 90071. Serves the following counties in California: Kern (East part), Los Angeles, Orange, Santa Barbara, San Bernardino, San Luis Obispo, and Ventura.

(10) 3030 North Central Avenue, Phoenix, AZ 85012. Serves Arizona and the section of the Yuma Indian Reservation in California the section of the Colorado River Indian Reservation in California, the sections of the Fort Mohave Indian Reservation in California and Nevada, and the sections of the Navajo Indian Reservation in Colorado and New Mexico.

(11) 301 West Congress Street, Tucson, AZ 85715 (post-of-duty). Serves the following counties in Arizona: Cochise, Graham, Greenlee, Pima, and Santa Cruz.

(12) 880 Front Street, San Diego, CA 92188. Serves the California counties of Imperial, Riverside, and San Diego, except the Fort Yuma, Colorado River, and Fort Mohave Indian Reservations.

(i) *Region X.* Regional Office, 710 Second Avenue, Seattle, WA 98104. Has jurisdiction over the following district and branch offices:

(1) 915 Second Avenue, Seattle, WA 98174. Serves the following counties in Washington: Chelan, Clallam, Douglas, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Okanogan, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, and Yakima.

(2) 1016 West Sixth Avenue, Anchorage, AK 99501. Serves Alaska.

(3) 101 Twelfth Avenue, Fairbanks, AK 99701 (branch office). Serves the Alaska election districts of Barrow-Kobuk, Fairbanks-Yukon, and Yukon-Kuskokwim.

(4) 1005 Main Street, Boise, ID 83701. Serves Idaho with the following exceptions: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone. Serves the Oregon Counties of Baker, Grant, Harney, Malheur, Union and Wallowa, except the section of the Fort McDermitt Indian Reservation in Oregon.

(5) 1220 SW Third Avenue, Portland, OR 97204. Serves Oregon except Baker, Grant, Harney, Malheur, Untion, and Wallowa counties. Serves the Washington counties of Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum.

(6) West 920 Riverside Avenue, Spokane, WA 99210. Serves the following counties in Washington and Idaho: Washington: Adams, Asotin, Benton, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman, Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

[FR Doc. 79-39622 Filed 12-27-79; 8:45 am]
BILLING CODE 6025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 270

[Regulation ER-1166; Economic Regulations, Enactment of Part 270; Docket 36816]

Criteria for Designating Eligible Points

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts criteria that it will use to decide which communities should be designated eligible points. These criteria will be applied to communities that were deleted from an air carrier's certificate between 1968 and 1978, and to other communities in Alaska and Hawaii. Points that were listed on an air carrier's certificate on October 24, 1978 are already defined by the Act as eligible points and are not covered by this rule. This rule is required by the section of the Federal Aviation Act that guarantees essential air service to small communities that are eligible points.

DATES:

Effective: December 20, 1979.

Adopted: December 20, 1979.

FOR FURTHER INFORMATION CONTACT: Patrick V. Murphy, Jr., Chief, Essential Air Services Division, Bureau of Domestic Aviation, Civil Aeronautics Board 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5408.

SUPPLEMENTARY INFORMATION: By EDR-390, 44 FR 59242, October 15, 1979, the Board proposed criteria that would be applied to deleted communities to determine which should be designated eligible points under section 419(b) of the Federal Aviation Act. Section 419(b) requires that the Board, by rule, establish objective criteria for designating eligible points from the group of about 130 communities that were deleted from an air carrier's section 401 certificate between July 1, 1968 and October 24, 1978. Communities that are designated eligible points will be included in the small community program and guaranteed essential air service, even if it requires subsidizing a carrier's service at that point.

In EDR-390, the Board proposed that communities that were less than 30 road miles from a hub or 20 road miles from a section 419(a) eligible point would not themselves be designated as eligible. A hub was defined as "a point enplaning more than 0.05 percent of the total enplanements in the United States." A community more than 30 but less than 60 road miles from a hub would be eligible if it enplaned or had the potential for enplaning 20 passengers per day. A community more than 60 road miles from a hub would be eligible if it enplaned or had the potential for enplaning 10 passengers per day. A separate criterion was proposed for Alaskan points. They would be designated eligible if they explaned or had the potential for enplaning 5 passengers per week. The proposal also made provision for designating additional points in Alaska and Hawaii that were never certificated as required by section 419(b)(1)(B).

Comments were filed by two Federal government agencies, six States, and eight local communities; they are discussed below.

General Issues

The State of Arizona and the Sandhills, N.C. Area Chamber of Commerce were concerned that the proposed criteria were too rigid and would be mechanically applied. They wanted the Board to be flexible in its approach so that the particular needs of each community could be considered before deciding which should be designated as eligible points.

The Texas Aeronautics Commission (TAC) objected to what it considered to be an undue focus in the proposal on the cost of the program to the Federal government. It viewed the major goal of the program as the promotion of air

service to small communities. It concluded that this required the Board to designate some communities as eligible points that do not meet the Board's traffic criteria even if it means subsidizing the service.

We agree with Arizona and Sandhills that the criteria should not be applied mechanically. We have therefore constructed them flexibly so that the individual circumstances of each community may be considered. The traffic criterion, for example, already has a sufficient cushion built into it. Communities that are more than 30 miles from a hub may present evidence that their traffic generating potential meets the Board's criterion for traffic levels even if their historic traffic level does not. Communities that would be excluded from the essential service program because of low traffic levels in the past may be designated eligible if the Board decided that the traffic generating potential there is sufficient to meet the criterion. In evaluating traffic, the Board will consider data submitted by the State and community, the reliability of the historic traffic data, the availability of alternative transportation, and the potential of the community for developing self-supporting air service or subsidized air service at a reasonable cost.

We believe that an isolation criterion that sets specific road mile standards for evaluating a community's eligibility is justified by the reasons for this criterion. The Board is adopting an isolation criterion based on mileage to exclude points from the essential service program that are located close enough to hubs or other eligible points to have reasonably convenient access to the national transportation systems without further Board action on their behalf. The isolation criterion will also avoid putting the Board in the position of guaranteeing essential air service at a point in competition with guaranteed, and possible subsidized, service at a nearby eligible point. Finally, it will avoid forcing the Board to guarantee and subsidize service that will have little chance of properly developing because of traffic diversion from convenient service nearby. The road mile standards are set low enough to accommodate all communities that truly need a Board guarantee of essential air service at their airport.

We do not agree with TAC's contention that the Board is placing too much emphasis on the cost of the program. Cost to the Federal government is one factor that Congress, in section 419(b)(2)(A), directed the Board to consider. It is only one of several factors, however, that the Board will consider in determining whether to designate a community as an eligible point. The traffic threshold is set low enough so that candidate communities may qualify as eligible points even though their service will have to be subsidized. The traffic criterion is only intended to insure that the air service is in fact needed, that its cost will be reasonable, and that there is a reasonable chance for it to become self-supporting.

Alternate or Additional Criteria

Several commenters, while not necessarily objecting to the Board's proposed criteria, suggested other factors that should be considered in designating eligible points. Arizona and New Hampshire requested that there be an economic criterion giving depressed areas special consideration. Air service, they claimed, is essential to the recovery of depressed areas. They pointed out that the Federal government spends a great deal of money attempting to revitalize these areas and asserted that subsidized air transportation should be viewed as part of that effort.

The availability of public ground transportation to the hub was cited by several commenters as a factor the Board should consider in deciding whether a community should be eligible. DOT suggested that any community that has limousine or bus service to a hub or section 419(a) eligible point need not itself be designated as eligible, presumably even if it met the traffic and isolation criteria. On the other hand, several commenters asked that any community that lacks public ground transportation to a hub be designated eligible regardless of its isolation or traffic levels.

Sandhills and the New York Department of Transportation were concerned about the size and quality of air service available at the nearby hub. The type and level of service at the hub are, according to New York, a necessary element of the Board's isolation criterion. They therefore asked that the size of the hub and the existence of direct service from there to the point's community of interest also be a factor in determining eligibility.

Finally, DOT suggested that the likelihood of self-supporting air service being developed at the community also be considered. A non-isolated community would be designated eligible under this criterion if it could demonstrate that self-sufficient air service can be developed there within 12 months of its start. Isolated communities would have a lesser burden. These communities would only be required to show that the subsidy cost of providing service there would not, after 1 year, exceed a limit based on either an appropriate per-passenger cost or some percentage of revenues or costs.

After considering all these alternatives, the Board agrees that most should be incorporated into the criteria.

The existence of public ground transportation to a hub is, for example, a factor we will use in determining the traffic generating potential of a community. A community with convenient ground transportation to a hub is less likely to enplane or have the potential for enplaning enough passengers to meet the traffic standards that we set. We agree, however, with DOT and the other commenters that the Board should give more emphasis to the availability of public ground transportation from the community to the hub and its other communities of interest. Doing so will conform the Board's practice more closely to the language in the Act that states that "the Board shall consider, among other factors, . . . the alternative means of transportation available to the residents of such point for access to the national transportation system and its principal communities of interest." We are therefore including the availability of alternative transportation in § 270.5. We do not agree that communities should automatically be excluded from the program solely because they have alternative transportation. That would be ignoring the other factors that Congress directed us to consider.

DOT's proposed test concerning the potential for developing self-supporting air service at the candidate community is also already a factor in our traffic criterion and we will state so explicitly in § 270.5. The traffic levels that were proposed were based on a DOT study that showed that points enplaning 10 passengers per day have a 75-percent chance of developing self-supporting air service. Using the traffic criterion in this manner allows us to objectively measure the probability of self-sufficient service being developed. Trying to forecast how well service will develop in 12 months and how much subsidy will be needed by then is otherwise too uncertain.

We are concerned about the needs of depressed areas, but are not adopting Arizona's suggestion that consideration be given to the economic condition of a community. Section 419 directs the Board to ensure the provision and maintenance of essential air service at eligible points. It does not appear that Congress intended for the Board to use section 419 to develop service at small communities on the basis of their

economic characteristics. The Board, however, is a member of the White House Rural Initiatives Program under which communities may be eligible for subsidy as part of a pilot program to develop air service there. The program is still in its initial phase.

Finally, we are concerned about the contentions in New York's proposal that the quality of service will be inadequate at nearby hubs when they are not large ones. An airport must enplane more than 132,000 passengers annually to qualify as a hub. This figure represents 0.05 percent of the total annual enplanements in the United States, as set out in "Airport Activity Statistics," a report published jointly by CAB and DOT. Any airport enplaning at least that number of people must, in the Board's judgment, be receiving enough air service to provide nearby communities with access to the national transportation system as well as connections, if not a direct flight, to their communities of interest. We will, however, in evaluating a community's traffic, consider the quality of air service that existed at the nearby hub.

Isolation Criterion

Serveral modifications were suggested to the Board's isolation criterion. Commenters questioned the manner of measuring distance to the hub. They suggested that driving time, rather than road miles, was the appropriate measure. Several commenters from Georgia, however, agreed with the Board proposal to measure distance by road miles. The New River Valley Airport Commission and DOT stated that if road miles are used, the Board should vary the qualifying distance depending on climatic and road conditions at the given community. The Utah Air Travel Commission and the Sandhills Chamber of Commerce proposed that a community's isolation be evaluated by measuring its distance from its principal community of interest rather than from its nearest hub.

The most frequent objection to the isolation criterion concerned its failure to include a separate test for the "most isolated" communities, points 90 to 100 miles from a hub. We did not propose a separate standard for these communities because it appeared that few deleted points would be in that category. The Department of Agriculture, however, asserted that the important question was not how many communities are affected but whether a separate criterion is needed. It claimed it is needed so that extremely isolated points, otherwise excluded from the essential service program, will have access to the national transportation system. It suggested that these communities be designated eligible if they are more than 90 miles from a hub and enplane at least six passengers per day. Arizona and New Hampshire suggested 100 miles as the qualifying distance, and three and five passengers respectively as the traffic standard. Other commenters called for separate criteria for the most isolated communities without suggesting specific qualifying distances or enplanement levels.

Although there are very few deleted communities more than 100 miles from a hub, we agree that there may be a need to consider them separately. Because of their isolation from the national air transportation system, these points may have a greater need for Board guarantees. It does not appear necessary, however, to establish a separate section in the rule to cover them. Instead, § 270.11 will be worded to indicate that the Board will be flexible in applying the traffic criterion at communities 100 road miles or more from a hub. When such a community is considered, special consideration will be given to designating it eligible even if it does not enplane 10 passengers per day.

We also give some weight to the objections to the proposed method for measuring isolation. We do not find the suggested changes practicable, however, because measuring distance by driving time is not feasible. Driving time depends on the driver, the vehicle, the road, the weather, the time of day, the amount of traffic, and the number of interruptions such as traffic signals and more temporary conditions encountered along the way. Our experience with deletion cases in the past has shown that attempts to set an average driving time to a hub defy satisfactory resolution. Road miles are in contrast an easily ascertainable measure of isolation. It is doubtful that a method for fixing driving times can be established that would be fair to all parties.

The same problem presents itself if the Board were to consider climatic and road conditions in establishing distance standards. There is no satisfactory objective method to measure the extent of the impact of defects in the roads or of bad weather on a point's degree of isolation.

More importantly, it does not appear necessary to make elaborate studies of driving times or climatic and road conditions at each community. In our judgment, the isolation threshold (30 road miles) is low enough to include any community that could reasonably claim it is isolated, regardless of driving or climatic conditions. A Board study, cited in DOT's comment at page 8, found that a community would have to be at least 90, and possibly as much as 140, minutes by ground transportation from an air service center (some were smaller than hubs) before it could be *presumed* to be isolated. Even taking the more conservative estimate, it is clear that few if any communities that are less than 30 road miles from a hub would qualify as isolated points even if driving time were used as the measure.

The comments of Utah and Sandhills concerning evaluating isolation by measuring the distance from the community of interest rather than to the hub misinterprets the Board's rationale for this criterion. It is meant as a measure of access to the national air transportation system, rather than to the point's primary community of interest. A community close to a hub generally does not need Board guarantees of its own air service to its community of interest. The nearby hub should be able to supply the necessary flights there.

Traffic Criterion

Concern was expressed in the comments about the method the Board would use to establish historic and potential traffic levels for candidate communities. The California Department of Transportation and the Utah Air Travel Commission wanted the Board to use data provided by the States and communities in establishing these traffic levels. The California and the New River Valley Airport Commission asked that facility improvements at the community's airport be considered in determining potential traffic levels. California also wanted traffic generated by a nearby Department of Defense facility to be part of the analysis.

Several commenters thought the traffic criteria did not adequately account for seasonal or peaking patterns. Sandhills sought the option of presenting traffic data by average weekly, rather than average daily, enplanements, to accommodate communities with peak weekend traffic. Several New Hampshire commenters asked the Board to consider seasonal variations in service in establishing the traffic criteria.

The relative weight given to historic and potential traffic data will depend on the reliability of the historic data. If those data are old, if the former service was poor, or if the community has experienced significant growth in population or business activity since its deletion, the Board will give more weight to the potential traffic data. In any event, we consider historic traffic to be only a base from which to begin an evaluation of a community's traffic

level. States and communities may submit their own historic and projected traffic data and their views on the relative weight to be given to each. They will be considered by the Board. Traffic generated by nearby Department of Defense facilities could be included in these submissions. Facility improvements at the community's airport do not, in the Board's view, have a significant bearing on a community's traffic generation, the measure of its need for air service. But to the extent that it can be shown that poor facilities depressed air traffic in the past or that the improved facilities will cause a surge in traffic now, the Board will consider this factor.

Communities may also present data on seasonal and peaking patterns in traffic at their airport. These will be considered, but a community will be designated eligible only if it can meet the traffic standards on at least an annual basis. It is possible to designate a community with a higher demand during one season as an eligible point but to guarantee essential service there only during that peak season.

The Rule

The Board is also adopting DOT's suggestion that the phrase "or an equivalent combination of cargo, mail, and passengers" be added at the end of § 270.20 concerning the traffic criterion for Alaskan points. This will take into account the importance of air cargo service in Alaska, a fact that the Board recognized in the preamble to EDR-390.

The criteria adopted here are simple and objective measures of the need for air service. They are, in our judgment, sufficiently lenient and flexible to ensure that communities truly needing a Board guarantee of air service and deserving government subsidy will receive it. The criteria will exclude those communities that already have access to the national transportation system through a nearby hub or eligible point. They will also exclude points lacking sufficient demand for air service to justify government guarantees and possible subsidy payments. At the same time, the criteria adopted here will allow those communities with a demonstrated need for air service to be included in the essential air service program. These points will be guaranteed service by the Board to the same extent as those already defined as eligible points by section 419(a) of the Act.

Since the Act requires that this rule be in effect by January 1, 1980, the Board finds good cause for making it effective immediately.

Accordingly, the Civil Aeronautics Board amends Chapter II of 14 CFR by adding a new Part 270, *Criteria for Designating Eligible Points,* to read:

PART 270—CRITERIA FOR DESIGNATING ELIGIBLE POINTS

Subpart A—General Provisions

Sec.

270.1 Purpose.
270.2 Applicability.
270.3 Definitions.
270.4 Evaluation of isolation.
270.5 Evaluation of traffic.

Subpart B—Criteria for Communities in the 48 Contiguous States

270.10 Communities close to hubs.
270.11 Communities not close to hubs.
270.12 Communities close to non-hub eligible points.

Subpart C—Criteria for Communities in Alaska and Hawaii

270.20 Deleted communities.
270.21 Other communities.

Authority: Secs. 204 and 419 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389.

Subpart A—General Provisions

§ 270.1 Purpose.

This rule establishes objective criteria for designating small communities as eligible points under section 419(b) of the Act.

§ 270.2 Applicability.

This part applies to the following communities:

(a) Communities that were deleted from an air carrier's section 401 certificate between July 1, 1968, and October 24, 1978;

(b) Communities that lost all certificated service at their airport as a result of being hyphenated on a section 401 certificate between July 1, 1968, and October 24, 1978 with another community that was served by more than one certificated carrier on October 24, 1978; and

(c) Any other communities in Alaska or Hawaii that apply for designation as an eligible point.

§ 270.3 Definitions.

As used in this part:

"Eligible point" means a community for which the Board will guarantee essential air service in accordance with the guidelines in Part 398 of this chapter.

"Hub" means a point annually enplaning more than 0.05 percent of the total enplanements in the United States.

§ 270.4 Evaluation of isolation.

The isolation of a community will be evaluated by measuring the driving distance from its center to the nearby hub's airport or to an eligible point's airport.

§ 270.5 Evaluation of traffic.

In evaluating traffic at a community the Board shall consider the following information:

(a) Historic traffic levels at the community;

(b) The future traffic generating potential of the community;

(c) Data submitted by the State, the interested community, or a carrier that has served or is serving the community;

(d) The reliability of the historic traffic data as an indication of the community's present traffic level;

(e) The availability of public surface transportation from the candidate community to its communities of interest and nearby hubs;

(f) The type and quality of air service that has been maintained at the nearby hub;

(g) Facility improvements at the community's airport to the extent that they will lead to an increase in enplanements there; and

(h) The potential of the community for developing self-supporting air service, or subsidized air service at a reasonable cost to the Federal government.

Subpart B—Criteria for Communities in the 48 Contiguous States

§ 270.10 Communities close to hubs.

A community that is less than 30 road miles from a hub airport will not be designated as an eligible point by the Board.

§ 270.11 Communities not close to hubs.

Except as provided in § 270.12—

(a) A community that is at least 30, but less than 60, road miles from a hub airport will be designated as an eligible point by the Board if that community enplanes or has the potential for enplaning 20 passengers each day during 5 days of the week;

(b) A community that is 60 or more road miles from a hub airport will be designated an eligible point by the Board if that community enplanes or has the potential for enplaning 10 passengers each day during 5 days of the week; and

(c) A community that is more than 100 road miles from a hub will be designated as an eligible point if there is a sufficient demand for air service there to warrant that designation.

§ 270.12 Communities close to non-hub eligible points.

A community will not be designated as an eligible point under this part if it is less than 20 road miles from the airport of a section 419(a) eligible point.

Subpart C—Criteria for Communities in Alaska and Hawaii

§ 270.20 Deleted communities.

A community in Alaska that was deleted from an air carrier's section 401 certificate between July 1, 1968, and October 24, 1978, or lost all certificated service at its airport as a result of being hyphenated with a multi-carrier point on a section 401 certificate between those dates, will be designated an eligible point by the Board if it enplanes or has the potential for enplaning at least 5 passengers each week or an equivalent combination of cargo, mail and passengers.

§ 270.21 Other communities.

(a) Any community in Alaska not covered by § 270.20 may be designated an eligible point after January 1, 1982, if, upon the application of that community, the Board finds that—

(1) The community enplanes or has the potential for enplaning at least 5 passengers each week or an equivalent combination of cargo, mail and passengers; and

(2) Designating that community as an eligible point will not result in more than —— points [1] receiving a subsidy under section 419 and section 406 of the Act.

(b) Any community in Hawaii may be designated an eligible point after January 1, 1982, if, upon the application of that community, the Board finds that—

(1) The community meets the criteria set forth in Subpart B of this part; and

(2) Designating that community as an eligible point will not result in more than —— points [1] receiving a subsidy under section 419 and section 406 of the Act.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-39628 Filed 12-27-79; 8:45 am]

BILLING CODE 6320-01-M

[1] The number of subsidized points on July 1, 1968 will be supplied at a later date.

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14 CFR Part 302

[Amendment No. 60, Docket 37293]

Rules of Practice in Board Proceedings; Settlement of Enforcement Proceedings

AGENCY Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB amends its rules of practice to simplify, expedite, and provide greater flexibility in the settlement of enforcement proceedings and to conform them to Freedom of Information Act standards. By a separate notice issued today, PDR-69, the Board is also requesting comments on this amendment.

DATES: Adopted: December 20, 1979. Effective: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Eleanor Minsky, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-6060.

SUPPLEMENTARY INFORMATION: In line with our general policies to simplify Board procedures and reduce paperwork, we have decided to revise the procedures for settling enforcement actions in § 302.215 of our rules of practice, 14 CFR Part 302. The changes are intended to conform the rules to existing practices and statutory requirements, to provide greater flexibility for all parties, and to facilitate and encourage settlement of enforcement proceedings. We are also taking this opportunity to rewrite § 302.215 in clearer language.

We are removing the requirement that the respondent submit a written "offer of settlement" to the Bureau of Consumer Protection. In practice, settlement negotiations usually involve the parties in an oral give-and-take process over a period of time and, while written offers may be desirable in some instances, we believe that that kind of tactical decision should be left for the parties themselves to work out, not imposed as a rule governing all cases. We of course expect the Bureau to give prompt consideration to any settlement proposal made by a respondent, but the requirement for a formal exchange in writing at each stage in the process imposes unnecessary paperwork and other burdens on the participants.

We are eliminating the requirement that administrative law judges must issue initial decisions under Rule 27 in approving settlements. The procedures called for under that rule are primarily designed for the adjudication of contested cases and are somewhat inapposite to the settlement process. Moreover, since in practice the parties to a settlement often agree on the text of a consent decree or order that articulates the relevant public interest considerations, the signing of such a consent order is all that should be necessary for the judge to register approval of the settlement, and issuance of an initial decision is a redundant formality in such cases. By a companion amendment to our Organization Regulations, OR-160, we are delegating authority to the administrative law judges to accept or reject settlement proposals submitted by the Bureau of Consumer Protection in enforcement cases under 14 CFR Part 385, which contains general procedures for staff actions in nonhearing matters. This change provides simpler and more flexible review procedures, including interlocutory review by the Board of any disapproval of a settlement by the judge; shortens the period in which Board review of an approved settlement may be sought from 21 to 10 days; and reduces the delay before a settlement may become effective. Since any consent order submitted as part of a settlement is generally the product of intensive and detailed negotiations between the parties, we feel that the judges should accept or reject settlements as submitted, without making unilateral changes in the text or format, and the rule will so provide. This, however, will not intrude upon the judges' inherent authority to raise informally with the parties any concerns they may have about the settlement package, suggest changes to resolve such concerns, or even condition approval on changes being made in the settlement.

The revised rule also clarifies the procedural rights of other parties to the proceeding once a settlement has been reached and submitted for approval. Previously the rule simply stated that the administrative law judge shall "consider" the views of all parties. We are now expressly providing that any settlement agreement shall be served on each party, and that any party may submit written comments supporting or opposing it within 10 days. Of course, the parties may stipulate to waive the 10-day period so that an agreement may be acted on without delay. Since it is implicit in the judges' function to consider each party's views on any matter presented in a proceeding, we do not think it is necessary in this particular rule to say that they must do so in these cases.

While redrafting this section, we have also reexamined the rule under Freedom of Information Act standards, especially in light of the 1974 and 1976 amendments to that legislation and enactment of the Airline Deregulation Act of 1978, which amended Section 1104 of the Federal Aviation Act, governing withholding of information, 49 U.S.C. 1504. Our revised rule codifies the Board's policy that, once agreement between the parties is reached and the settlement has been submitted to the administrative law judge, there are no longer grounds to conceal the terms of the agreement. However, while negotiations are in progress, information contained in any documents relating to

or exchanged in the course of settlement negotiations shall be kept from public disclosure, if the Director of the Bureau of Consumer Protection determines that disclosure would interfere with the likelihood of settlement. This is consistent with exemption 7 of the Freedom of Information Act, 5 U.S.C. 552(b)(7). To encourage the free flow of information and ideas during settlement discussions, we believe some protection is necessary to assure parties that positions taken and matters revealed during the negotiating process will not be prematurely publicized or made known to their competitors. The Director is familiar with the litigation, is aware of the nature of the information at issue and can evaluate its importance in the settlement; therefore, we believe he or she will be best situated to evaluate the effect that disclosure of such information might have in a particular case. Of course, even if the Director does not agree that disclosure would interfere with the likelihood of settlement, claims for confidential treatment of information may still be asserted under any applicable exemption if a request for documents is made under FOIA, and these will continue to be determined on a case-by-case basis in accordance with our existing procedures.

Since these amendments are administrative in nature, affecting a rule of agency procedure, we find that notice and public procedure before adoption of a final rule are unnecessary. Moreover, the amendment is intended to expedite our proceedings and to relieve burdens on participants in Board proceedings, and we accordingly find that an immediate effective date is in the public interest.

While there is no legal requirement that we solicit comments on this rule, we nonetheless have decided to do so, since the public may have useful comments and suggestions on whether these procedures are the most effective way to ensure speed, fairness, and flexibility in the settlement of enforcement proceedings before the Board. Therefore, by a separate notice also issued today, PDR-69, we are inviting public comments on these amendments, and we will evaluate any comments in due course, with a view to making further revisions in the rule if called for.

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

1. The table of contents of Part 302 is amended to read as follows:

* * * * *

Sec.
302.215 Settlement of proceedings.
* * * * *

2. Section 302.215 is revised to read as follows:

§ 302.215 Settlement of proceedings.

(a) The Director of the Bureau of Consumer Protection and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision. The Director shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the Administrative Law Judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within 10 days from the date of service.

(c) The Administrative Law Judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Director of the Bureau of Consumer Protection determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

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

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-39624 Filed 12-27-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 302

[Doc. 37293; PDR-69; Dated: December 20, 1979]

Rules of Practice in Board Proceedings; Settlement of Enforcement Proceedings

AGENCY: Civil Aeronautics Board.

ACTION: Request for Comments on Final Rule.

SUMMARY: By PR-217, issued today, the CAB is amending its rules of practice in enforcement proceedings to simplify, expedite and provide greater flexibility in the settlement of enforcement proceedings and to conform them to Freedom of Information Act standards. In this proceeding, the CAB invites comments on the rule adopted, with a view to issuing a revised rule later if necessary.

DATES: Comments by February 26, 1980. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments shall be sent to Docket 37293, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Eleanor Minsky, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-6060.

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

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR. Doc. 79-39625 Filed 12-27-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 385

[Organization Regulations; Amdt. No. 93 to Part 385; Docket 37293]

Amendment of Delegation of Authority to the Administrative Law Judges

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB amends its delegation of authority to administrative law judges that allows them to approve or disapprove settlements of enforcement proceedings, in order to simplify the settlement process.

DATES: Adopted: December 20, 1979. Effective: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Eleanor Minsky, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-6060.

SUPPLEMENTARY INFORMATION: Rule 215 of the Board's rules of practice (14 CFR 302.215) provides procedures for settlement of enforcement proceedings.

By amendment to our procedural regulations we are revising Rule 215 to simplify, expedite and provide greater flexibility in the settlement process. The current Rule 215 provides that administrative law judges shall issue initial decisions approving settlement offers in accordance with § 302.27. The procedures called for under Rule 27 are primarily designed for the adjudication of contested cases and are somewhat inapposite to the settlement process. Since the settlement process is a nonhearing matter, delegation of authority to approve settlements more properly belongs under 14 CFR Part 385 which sets forth general procedures for staff decisions in nonhearing matters. For the reasons stated in PR-217, issued today, we are therefore issuing this final rule to include in the delegation of authority to administrative law judges under § 385.11 authority to approve or disapprove settlements submitted under Rule 215.

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary, and that the rule may become effective immediately.

Accordingly, the Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters,* as follows:

In § 385.11, a new paragraph (d) is added to read:

§ 385.11 Delegation to the Administrative Law Judges, Bureau of Administrative Law Judges.

The Board hereby delegates to the Administrative Law Judges, Bureau of Administrative Law Judges, the authority to take the following actions in matters to which they are respectively assigned:

* * * * * *

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under § 302.215 of this chapter.

* * * * *

(Secs. 204(a) and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 788, 49 U.S.C. 1324, 1481; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 5 U.S.C. Appendix)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-39627 Filed 12-27-79; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. IA-710]

Delegations of Authority to the Director of the Division of Investment Management, the Director of the Division of Enforcement, and the Regional Administrators

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Commission is amending its rules relating to general organization to delegate to the Director of the Division of Investment Management ("Investment Management Director") the authority to issue notices and orders in connection with certain applications for exemptive orders under the Investment Advisers Act of 1940 ("Advisers Act") and to permit the withdrawal of applications under the Advisers Act. In addition, the Commission is delegating to the Investment Management Director, the Director of the Division of Enforcement ("Enforcement Director"), and each Regional Administrator the authority to make written demands upon certain non-resident investment advisers to furnish to the Commission copies of books and records required to be maintained by such non-resident investment advisers under the Advisers Act.

EFFECTIVE DATE: December 19, 1979.

FOR FURTHER INFORMATION CONTACT: Michael J. Eizelman, Esq., Office of Investment Adviser Regulation, Division of Investment Management, Securties and Exchange Commission, Washington, D.C. 20549 (202) 272-2079.

SUPPLEMENTARY INFORMATION: The Commission is amending its rules relating to general organization to delegate to the Investment Management Director the authority (i) to issue notices and orders, pursuant to Rule 0-5 under the Advisers Act [17 CFR 275.0-5],[1] in connection with certain applications for exemptive orders under Sections 202(a)(11)(F) [15 U.S.C. 80b-2(a)(11)(F)][2] and 206A [15 U.S.C. 80b-6a][3] of the Advisers Act and (ii) to permit the withdrawal of applications under the Advisers Act. In addition, the Commission is amending its general organization rules to delegate to the Investment Management Director, the Enforcement Director, and each Regional Administrator the authority to make written demands, pursuant to Rule 204-2(j)(3)(ii) under the Advisers Act [17 CFR 275.204-2(j)(3)(ii)],[4] upon certain non-resident investment advisers to furnish to the Commission copies of books and records required to be maintained by such non-resident investment advisers under the Advisers Act.

The authority delegated to the Investment Management Director with respect to Sections 202(a)(11)(F) and 206A of the Advisers Act is limited to applications which to not appear to the Investment Management Director to present issues not previously settled by the Commission and do not appear to the Investment Management Director to require, in the public interest or the interest of investors, that a hearing be held. In such cases the delegated authority should result in a more expeditious processing of applications by eliminating the delay involved in obtaining Commission approval for the issuance of notices and orders in connection with the applications. In addition, the delegation of authority to the Investment Management Director to permit the withdrawal of applications under the Advisers Act should facilitate such withdrawals. The Commission previously has made similar delegations of authority to the Investment Management Director under the Investment Company Act of 1940 [15 U.S.C. 80a-1, et seq.].

Finally, the authority delegated to the Investment Management Director, the Enforcement Director and each Regional Administrator to make written demands pursuant to Rule 204-2(j)(3)(ii) under the Advisers Act will provide the Commission's staff with more timely access to the books and records of non-

[1] Rule 0-5 sets forth the general procedures applicable to proceedings initiated by the filing of an application under the Advisers Act, including certain requirements relating to the issuance of notices and orders by the Commission with respect to such applications.

[2] Section 202(a)(11)(F) authorizes the Commission to exclude, by rule or order, any person from the definition of "investment adviser" set forth in Section 202 (a)(11) of the Advisers Act if the Commission finds that such person is "not within the intent of [Section 202(a)(11)]. . . ."

[3] Section 206A empowers the Commission to exempt, by rule or order, any person from any provision of the Advisers Act if it determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

[4] Rule 204-2(j)(3)(ii) requires that a non-resident investment adviser who does not maintain within the United States copies of all books and records required to be kept by such non-resident investment adviser under the Advisers Act must furnish to the Commission, pursuant to an undertaking required to be filed with the Commission, copies of all, or any part of, such books and records within fourteen days after written demand by the Commission therefor.

resident investment advisers who are subject to the provisions of such rule.

Authority, Effective Date

The Commission hereby amends Rules 30–4, 30–5 and 30–6 of the rules of the Commission relating to general organization [17 CFR 200.30–4, 30–5 and 30–6] by adding new paragraph (a)(6) to Rule 30–4; by adding new paragraphs (e)(3), (4), (5) and (6) to Rule 30–5; and by redesignating paragraphs (d) and (e) of Rule 30–6 as paragraphs (e) and (f), respectively, and by adding a new paragraph (d) thereto, pursuant to the authority contained in the Act of August 30, 1962, Pub. L. No. 87–592, 76 Stat. 394 [15 U.S.C. 78d–1, 78d–2] and Section 211(a) of the Advisers Act [15 U.S.C. 80b–11(a)].

The Commission finds, in accordance with sections 553(b)(A) and 553(d) of the Administrative Procedure Act [5 U.S.C. 553(b)(A), 553(d)], that the foregoing action relates solely to agency organization, procedure, or practice; that Section 553(b) of such act [5 U.S.C. 553(b)] makes unnecessary the notice and public procedures required by section 553 of such act [5 U.S.C. 553]; and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, the amendments to Rules 30–4, 30–5 and 30–6 are effective immediately.

Commission Action

Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By adding new paragraph (a)(6) to § 200.30–4 as follows:

§ 200.30–4 Delegation of Authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(6) pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, et seq.), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

2. By adding new paragraphs (e) (3), (4), (5) and (6) to § 200.30–5 as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(e) * * *

(3) To issue notices, pursuant to Rule 0–5(a) (§ 275.0–5(a) of this chapter), with respect to applications for orders under the following sections of the Act and the rules and regulations promulgated thereunder, where, upon examination, the matter does not appear to him to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors requires that a hearing be held:

(i) Section 202(a)(11)(F), 15 U.S.C. 80b–2(a)(11)(F).

(ii) Section 206A, 15 U.S.C. 80b–6a.

(4) To authorize the issuance of orders where a notice, pursuant to Rule 0–5(a) (§ 275.0–5(a) of this chapter), has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that he believes has not been previously settled by the Commission and it does not appear to him to be necessary in the public interest or the interest of investors that a hearing be held (section 211(c) of the Act, 15 U.S.C. 80b–11(c)).

(5) To permit the withdrawal of applications pursuant to the Act (15 U.S.C. 80b–1, et seq.).

(6) Pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident inventment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in any such demand.

3. By redesignating paragraphs (d) and (e) of § 200.30–6 as paragraphs (e) and (f) respectively and by adding a new parapraph (d) thereto as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(d) With respect to the Investment Advisers Act of 1940, 15 U.S.C. 80b–1, et seq.: Pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

By the Commission.

George A. Fitzsimmons,

Secretary.

December 19, 1979.

[FR Doc. 79-39620 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34-16443]

Securities Position Listing Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a previously proposed rule requiring clearing agencies to provide securities position listings to issuers whose securities the clearing agency holds in its name or that of its nominee. A securities position listing is a list of the participants in a clearing agency on whose behalf the clearing agency holds the issuer's securities and of their positions in the issuer's securities as of a specified date.

EFFECTIVE DATE: January 28, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry R. Marlatt, Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272–2792.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of Rule 17Ad–8, requiring clearing agencies to furnish a securities position listing to an issuer at the issuer's request. The rule, which becomes effective 30 days after publication in the Federal Register, was proposed in securities Exchange Act Release No. 14493, February 22, 1978; 43 FR 8269, March 1, 1978. In accordance with Section 17A(d)(3)(A)(i) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78q–1(d)(3)(A)(i), the Commission has consulted and requested the views of the Board of Governors of the Federal Reserve System at least fifteen days prior to this announcement.

The rule as proposed would have required registered clearing agencies to transmit securities position listings to issuers at least annually, or more frequently at an issuer's request. Annual

and quarterly listings would have been provided without charge, but more frequent listings would have been subject to a reasonable charge based on the clearing agency's cost of preparation.

Under the proposed rule, clearing agencies also would have been required to furnish a securities position listing to non-issuers (i) who certified their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to an issuer's list of security holders of record or securities position listing or (ii) who attested that the issuer had consented to the clearing agency providing the list to them. Non-issuers would have been required to notify issuers of their request, and issuers would have had an opportunity to contest claims of entitlement. All listings provided to non-issuers would have been subject to a reasonable charge.

The impetus for the proposed rule was the recommendation in the Final Report of the Street Name Study that "each depository be required to transmit periodically to each issuer whose securities the depository holds of record a list of the persons on whose behalf the depository holds the securities." [1] That recommendation was intended to formalize an existing depository practice which permits issuers to initiate the issuer-security owner communication process directly with depository participants rather than with depositories. The proposed rule went beyond the Street Name Study recommendation, however, by extending the requirement to all clearing agencies. The reason for the extension was that, although depositories hold the great majority of securities held by clearing agencies, clearing corporations also may hold securities in their name or that of their nominee.

The proposal also went beyond the recommendation in the Street Name Study by providing that certain non-issuers would have been able to obtain securities position listings directly from clearing agencies without the need for issuer cooperation. The reason for extending this authority to certain non-issuers was that depositories sometimes have refused to provide securities position listings to persons other than issuers. In addition, issuers often have argued that under state law they are obligated to reveal only their shareholders of record list, a list which discloses depositories as the owner of record but not the identities of depository participants on whose behalf the depository is holding securities. As a result, non-issuers that are entitled to inspect, obtain or otherwise gain access to an issuer's shareholders of record list often are required to begin the communication process with depositories rather than with depository participants—a requirement that adds an additional step to the security owner communications process.

The Commission received nineteen comment letters on the proposed Rule.[2] The commenters generally endorsed that part of the proposed rule which would require clearing agencies to provide securities position listings to issuers. Numerous criticisms were raised regarding the providing of securities position listings to non-issuers, however.

After reviewing the comment letters and reassessing the need for the proposed rule, the Commission has decided to (i) adopt, with certain changes, that portion of proposed Rule 17Ad–8 which world required clearing agencies to provide securities position listings to issuers, but (ii) withdraw that portion of the proposed Rule which would have provided non-issuers with access to securities position listings. The following discussion focuses on the four sections of the proposed Rule 17Ad–8 and consists of (i) a description of each proposed section, (ii) a summary of the comments received on the section, and (iii) the Commission's action on the adoption amendment, or withdrawal of the section.

A. Proposed Section 17Ad–8(a)—Definition of Securities Position Listing

This section of the proposed rule defines the term "securities position listing." No comments were received on the definition, and the Commission has adopted the section as proposed.

B. Proposed Section 17Ad–8(b)—Requirement That Clearing Agencies Transmit Securities Position Listings to Issuers

As discussed, this section of the proposed rule would have required clearing agencies to transmit securities position listings to issuers annually, or more frequently at the issuers' request. Annual and quarterly listings would have been provided without charge, but more frequent listings would have been subject to a reasonable charge.

Some commenters specifically supported the prevailing depository practice of providing securities position listings to issuers, and no commenter criticized the practice. There was a difference of opinion, however, concerning the need to formalize the practice in a Commission rule and on the need to extend the practice to clearing corporations. More specifically, four commenters endorsed the section as proposed, while one depository indicated that it was not aware of occurrences which suggested a need for the proposed rule. A clearing corporation argued that the rule should be limited to depositories and should not be applied to clearing corporation functions, such as delivery and receipt services and the provision of financing for securities transactions, although in providing those services a clearing corporation may hold some customer securities in a segregated account or in nominee name pending delivery.

In addition to those general comments, there were two specific concerns raised by the commenters. A corporation suggested that a depository should be required to transmit securities position listings to issuers within fifteen days of the request and that a regular annual listing be transmitted within thirty days of the close of the corporate year.

A number of commenters also were concerned about the provision which would have required clearing agencies to transmit annual and quarterly securities position listing to issuers free of charge. One commenter argued, for example, that "the cost will be passed on to all participants in a depository, even those who do not have a position in a particular stock." A clearing corporation said that, if the proposed rule were to apply to all clearing agencies, not only to depositories, then a clearing agency should be compensated for each listing it is required to provide. A depository wrote that it "believes the current practice of requiring issuers to

[1] SEC, *Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities*, pursuant to Section 12(m) of the Securities Exchange Act of 1934 (Committee Print 1976) (the "Street Name Study"), 55.

[2] Eight letters were received from corporations: American Standard, Inc. ("American Standard"), Caterpillar Tractor Co. ("Caterpillar"), Dresser Industries, Inc. ("Dresser"), Glosser Bros. ("Glosser Bros."), Joy Manufacturing Co. ("Joy Mfg."), Litton Industries ("Litton"), Pacific Gas and Electric Company ("PG&E"), and A. O. Smith Corporation ("Smith Corp.").

Four letters were received from associations: American Bar Association ("ABA"), American Bankers Association ("Am. Bankers Assoc."), American Society of Corporate Secretaries, Inc. ("ASCS"), and Western Stock Transfer Association, Inc. ("WSTA").

Four letters were received from clearing agencies: Bradford Securities Processing Services Inc. ("BSPS"), Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC"), and Pacific Securities Depository Trust Company ("PSDTC").

Two letters were received from individuals: Joseph M. Jankite ("Jankite"), and Charles P. Stetson, Jr. ("Stetson").

One letter was received from an investment banker: A. F. Castellano ("Castellano").

bear such costs other than at the time of a shareholders meeting represents a more reasonable approach. . . ." Another depository expressed a similar view. A second clearing corporation felt that requiring clearing agencies to provide an annual and quarterly listing to issuers free of charge was an unnecessary burden in view of the modest cost now imposed on issuers to receive a securities position listing.

Finally, a corporation expressed concern about the ability of corporations with small capitalization to communicate directly to their shareholders with frequency and without delay. It argued that the proposed rule does nothing to alleviate "the hiding of beneficial ownership via usage of nominee names," but "actually gives tacit approval to the continuance."

The Commission believes that section (b) of the proposed rule, with the amendments discussed below, should be adopted for two reasons. First, unlike depositories, clearing corporations customarily do not provide securities position listings to issuers. As a result, although the great majority of securities held by registered clearing agencies are held by depositories, issuers still are required to initiate the communication process with clearing corporations rather than with the clearing agencies' participants, a step that the Commission believes should be eliminated.

Second, this requirement is a necessary complement to Securities Exchange Act Rule 14d–5 (17 CFR 240.14d–5) which the Commission recently adopted.[3] Rule 14d–5 gives bidders a Federal right to disseminate tender offer materials by means of mailings pursuant to the stockholder lists of the subject company and securities position listings of clearing agencies. At the election of the subject company, the dissemination may be conducted either by the bidder, using lists furnished by the subject company, or by the subject company itself, in which case the bidder would not be furnished copies of the lists. Because the operation of Rule 14d–5 is dependent on issuers receiving securities position listings from clearing agencies, the Commission believes requiring clearing agencies to furnish issuers with those listings is a necessary complement to the implementation of Rule 14d–5.

With regard to the comment that clearing agencies should be required to provide securities position listings to issuers within specific time periods, the Commission is unaware of any instance in which a depository has not furnished a securities position listing to an issuer in a timely manner. In addition, because the number of issues held by clearing agencies vary greatly and because the degree to which clearing agencies are automated also varies, the Commission does not favor imposing specific time requirements on clearing agencies. At the same time, the Commission believes it would be beneficial to include a "promptly" standard in section (b) of the proposed rule. Such a standard would help ensure that securities position listings are provided to issuers in a timely manner.[4]

As for the proposal that annual and quarterly securities position listings be provided to issuers free of charge, the Commission agrees with those commenters who argued that clearing agencies should be able to charge a reasonable fee for providing securities position listings to issuers. DTC, for example, currently charges issuers $60 per year for quarterly securities position listings. If DTC were required to provide those quarterly listings free of charge, it could represent a potential loss of income to DTC of approximately $750,000, a loss in income which is not insignificant and which would have to be absorbed by DTC's participants.[5] At the same time, the Commission does not believe that clearing agencies should be authorized to charge issuers for unwanted securities position listings. As a result, the Commission has amended section (b) to provide that clearing agencies are authorized only to charge for securities position listings requested by issuers and has eliminated the requirement that securities position listings be sent to issuers annually. Clearing agencies, of course, still would be able to send securities position listings to issuers free of charge if they so desired.

The Commission recognizes that issuers normally are not represented on clearing agencies' boards of directors and therefore have no input into determining the amount charged for securities position listings. At the same time, there is no indication that depositories have charged unreasonable fees for securities position listings, and such fees would have to be filed with the Commission pursuant to Rule 19b–4 under the Act.

Finally, with regard to the comment that the proposed rule would not assist corporations of small capitalization in communicating directly to their shareowners, Rule 17Ad–8 is not designed to reveal an issuer's beneficial security owners or to permit issuers to communicate directly with their beneficial security owners.

C. Proposed Sections 17Ad–8 (c) and (d)—Transmission of Securities Position Listings to Non-Issuers

Section (c) of the proposed rule would have required clearing agencies to furnish a securities position listing to non-issuers (i) who certified their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to an issuer's shareholders of record list or securities position listing, or (ii) who attested that the issuer had consented to their receiving the listing. Non-issuers would have been required to notify issuers of their request, and issuers would have had an opportunity to contest claims of entitlement. All listings provided to non-issuers would have been subject to a reasonable charge.

Section (d) of the proposed rule, in turn, would have made it unlawful for any person (i) knowingly or willfully to certify falsely their entitlement to an issuer's securities position listing or (ii) to violate willfully any provision of the proposed rule.

Two commenters supported proposed Rule 17Ad–8 in its entirety. Another commenter endorsed the concept of providing securities position listings to non-issures whenever the issuer was required to provide a non-issuer with its shareholders of record list. One commenter also thought the concept was a useful one. The latter two commenters, however, had a number of concerns about the specific provisions of sections (c) and (d) of the proposed rule. Every other person who commented on sections (c) and (d) either objected to the concept of clearing agencies providing securities position listings to non-issuers or were concerned about specific provisions of those two sections. One commenter, for example, indicated that it was not aware of significant opposition by issuers to providing securities position listings to those entitled under State law to the shareholders of record list. A depository argued that the proposal would not achieve its primary purpose of facilitating issuer-shareowner communications because non-consenting issuers always would intervene to block the release of a

[3] Securities Exchange Act Release No. 16384, November 29, 1979; 44 FR 70326, December 6, 1979.

[4] As discussed, Securities Exchange Act Rule 14d–5 requires issuers to undertake certain actions regarding the dissemination of tender offer materials within specified time periods. Some of those actions require the use of a securities position listing by the issuer. In responding to requests for securities position listings arising from the operation of Rule 14d–5, a clearing agency should be mindful of the obligations that rule places on issuers.

[5] There currently are over 13,000 issues eligible for deposit into DTC, and DTC charges issuers $60 per annum for quarterly securities position listings.

securities position listing to a non-issuer. That depository also argued that it was not aware of any court that had denied access to a securities position listing when a non-issuer was entitled to an issuer's shareholders of record list and, thus, that existing State law already may provide for access to securities position listings by qualified non-issuers. A clearing corporation saw no apparent benefit from these sections of the proposed rule since broker-dealers are only required to cooperate with issuers under Securities Exchange Act Rule 14b–1 (17 CFR 240.14b–1). That clearing corporation also argued that securities position listings should be given only to issuers and that any dispute over access to the list should be resolved directly between the issuer and non-issuer. Finally, a number of other commenters opposed the concept of providing securities position listings to non-issuers.

In addition to those general comments, there were several concerns raised about specific provisions of sections (c) and (d) of the proposed rule. A number of commenters complained that there were no restrictions on the subsequent use of the list by non-issuers and that the list could be used for improper purposes. Other commenters were concerned that the proposed rule might be contrary to existing State law. One of those commenters argued, for example, that the proposal could be viewed as shifting the burden of proof regarding access to the securities position listing from the non-issuer to the issuer, a change it felt should be made by State legislatures.

Numerous concerns also were raised regarding the certification provision of the proposed rule. More specifically, some commenters felt that securities position listings should not be given to non-issuers on the basis of an unconfirmed certification prepared by the non-issuer, while others felt that the notification process may not give issuers sufficient time to respond to a non-issuer's claim of entitlement. A number of commenters were concerned that it was unclear whether clearing agencies had any responsibility to evaluate the validity of a non-issuer's claimed entitlement to a securities position listing, while other commenters were concerned that the proposal could expose clearing agencies to liability if they furnished a non-issuer with a securities position listing and the non-issuer's claimed entitlement later provided to be invalid.

The two principal areas in which non-issuers have sought access to securities position listings are the tender offer and proxy areas. After reviewing the comment letters on proposed Rule 17Ad–8 and reassessing the non-issuer access provisions of that proposal, the Commission believes, as discussed below, that the question of non-issuer access to securities position listings in the above two areas is best addressed in the context of the Commission's tender offer and proxy rules rather than in a general provision such as proposed Rule 17Ad–8. Aside from the tender offer and proxy areas, the Commission is unaware of situations in which non-issuers entitled to an issuer's shareholders of record list have unsuccessfully sought access to the issuer's securities position listing. Accordingly, the Commission perceives no need at this time for sections (c) and (d) of proposed Rule 17Ad–8 and has withdrawn those sections.

With regard to the tender offer area, the Commission, as discussed, recently adopted Securities Exchange Act Rule 14d–5, which gives bidders a Federal right to disseminate tender offer materials by means of mailings pursuant to the stockholder lists of the subject company and securities position listings of clearing agencies. At the election of the subject company, the dissemination may be conducted either by the bidder, using lists furnished by the subject company, or by the subject company itself, in which case the bidder would not be furnished copies of the lists. Rule 14d–5 also contains specific provisions concerning the use, handling and disposition of the lists by bidders and otherwise addresses many of the concerns raised about the non-issuer access provisions of proposed Rule 17Ad–8.

As for the proxy area, Securities Exchange Act Rule 14a–7 (17 CFR 240.14a–7) currently provides an election similar to that contained in Rule 14d–5. In brief, Rule 14a–7 gives an issuer the option of mailing security holders' communications or of providing security holders with its shareholders of record list and other information that would enable security holders to mail the communications themselves. The Commission believes that amending Rule 14a–7 to include securities position listings among the information that the issuer may elect to provide security holders may be a better approach for providing non-issuer access to securities position listings in the proxy area. The Commission will review the possible amendment of that rule.

In accordance with the foregoing, the Commission adopts Rule 17Ad–8, as set forth below, effective January 28, 1980.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and, in particular, Sections, 2, 17A, and 23(a) thereof [15 U.S.C. 78b, 78q–1, and 78w(a)], the Commission amends Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add § 240.17Ad–8, as set forth below, effective January 28, 1980. The Commission does not perceive that any burden is imposed upon competition by this amendment.

Text of Rule

Section 240.17Ad–8 is added as follows:

§ 240.17Ad–8 Securities position listings.

(a) For purposes of this section, the term "securities position listing" means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) Upon request, a registered clearing agency shall furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. A registered clearing agency may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer.

By the Commission.

December 20, 1979.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79-39621 Filed 12-27-79; 8:45 am]
BILLING CODE 8010-01-M

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17 CFR Part 240

[Release Nos. 33–6170; 34–16436]

Quarterly Reporting Requirements; Smaller Life Insurance Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is further deferring, until 1981, the effective date of the quarterly reporting requirements for smaller life insurance companies whose shares are not actively traded. Such additional delay is necessary to allow sufficient time for the Commission to consider, as a result of the testimony gathered at its small business hearings, whether one or more classes of small

issuers should be established for purposes of reducing the periodic reporting requirements under the Securities Exchange Act of 1934.

EFFECTIVE DATE: Deferred from fiscal years ending after December 25, 1980 to years ending after December 15, 1981.

FOR FURTHER INFORMATION CONTACT: Robert Rupp or Evan J. Kemp, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On September 20, 1976, the Commission issued Accounting Series Release No. 197 [41 FR 42645] [1] to require quarterly financial reporting, on Form 10-Q, by life insurance companies and holding companies having only life insurance subsidiaries. In that release the Commission stated:

> Recognizing that some life insurers do not presently prepare quarterly financial information, the Commission believes that the reporting responsibilities imposed by these amendments should first be applied to those life insurance companies whose activities are most closely followed by analysts and investors. At the same time and taking into account the lead time and start-up requirements for those companies not currently preparing quarterly financial information on a generally accepted accounting principles (GAAP) basis, the Commission has decided to defer the effective date of these amendments until 1978 for life insurance companies whose shares are not actively traded. In addition, the Commission notes that its Advisory Committee on Corporate Disclosure is reviewing the overall question of the reporting responsibilities of smaller companies. The results of their work are anticipated in mid-1977 and could possibly impact the filing requirements of many smaller companies, including small public life insurance companies. Accordingly, the Commission will give notice no later than September 30, 1977, as to whether or not there will be any further delay of the effective date of these amendments or any change in these amendments with respect to those life insurance companies whose shares are not actively traded.

In Accounting Series Release No. 228, October 7, 1977, [42 FR 54531], the Commission further deferred through 1978 the effective date of these requirements. Subsequently on November 3, 1977 the Commission's Advisory Committee on Corporate Disclosure issued its report which included the following recommendations concerning the problems of small companies:

The Commission should hold public hearings to determine: (1) Whether and to what extent, the Commission should attempt to define a category of "small companies" for the purpose of requiring less burdensome reporting; (2) how such a classification, if desirable and possible, should be defined; and (3) if definition is possible, what reductions of reporting requirements are possible, consistent with the purposes of the Federal securities laws.

During April and May of 1978 the Commission staff conducted a series of public hearings in several parts of the country at which the problems of small companies were discussed. In Accounting Series No. 259, December 28, 1978 (44 FR 1727), the Commission again deferred, through 1979, the effective date of the quarterly reporting requirements for life insurance companies whose shares are not actively traded. The reason for this deferral was to allow the staff time to review the testimony taken at the hearings and ascertain future policies relating to small companies generally. As a result of the information gathered at the hearings, numerous changes in the Commission's rules and regulations which have a particular impact on small businesses have been effected. At present the staff has under consideration the development of one or more classes of small issuers for purposes of reducing the reporting requirements under Sections 13 and 15(d) of the Securities Exchange Act of 1934. A proposal of this nature may have direct impact on smaller life insurance companies. Accordingly, the Commission has decided to further defer until 1981 the effective date of the quarterly reporting requirements for life insurance companies whose shares are not actively traded.

COMMISSION ACTION: The Commission hereby amends paragraphs (c)(1) of §§ 240.13a-13 and 15d-13 of 17 CFR Part 240, to defer the effective date specified therein as given below.

§ 240.13a-13 Quarterly reports on Form 10-Q (§ 249.308a of this chapter).

* * * * *

(c) * * *

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 15, 1981, if they do not meet the tests specified in paragraph (t)(1)(i) of § 210.3-16; or

* * * * *

§ 240.15d-13 Quarterly reports on Form 10-Q (§ 249.308a of this chapter).

* * * * *

(c) * * *

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 15, 1981, if they do not meet the test specified in paragraph (t)(1)(i) of § 210.3-16; or

* * * * *

These amendments are adopted pursuant to authority in Sections 12, 13, 15(d) and 23(a) [12 U.S.C. 781, 78m, 78o(d) and 78w] of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons,

Secretary.

December 19, 1979.

[FR Doc. 79-39619 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[1] Certain corrections to that release were made in Accounting Series Release No. 218 [42 FR 27879], May 23, 1977.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 271 and 274

[Docket No. RM79-68; Order No. 42-A]

Ceiling Prices; Determinations by Jurisdictional Agencies; New Natural Gas and Certain Natural Gas Produced From the Outer Continental Shelf; Order Denying Motion for Reconsideration and Granting in Part and Denying in Part Petitions for Rehearing or Order No. 42

December 20, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Errata notice.

SUMMARY: This Notice Contains Corrections to the Commission's order issued November 29, 1979 (44 FR 69642, December 4, 1979). Please note that the following corrections should be made:

1. The word "both" in the second sentence in the last full paragraph in the third column on page 69643 is corrected to read "either" so that the sentence now reads (in pertinent part):

Therefore we will require application of this test only if the potentially disqualifying well—that is, an old well which penetrated the subject reservoir before April 20, 1977, and produced oil or gas in commercial quantities before that date—does not meet either of the following conditions:

* * * * *

2. The reference to "§ 271.201" in the first line of the last paragraph in the second column on page 69644 is corrected to read "§ 271.204."

3. The phrase "or natural gas in commercial quantities prior to April 20," in the seventh and eighth lines of the first sentence of the first full paragraph in the first column on page 69645 is deleted. The sentence should now read in pertinent part as follows (emphasis in original):

According to the test in § 274.202(a)(2)(ii)(1)(II): if the sale of production from the subject reservoir (net of royalty) through any well that produced crude oil or natural gas in commercial quantities prior to April 20, 1977, at the *"Market price reasonably available as of April 20, 1977,"* * * *

4. Paragraph "3." under the heading "PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES" on page 69647 is corrected by inserting ", by changing (C) to (E) in clause (ii)(F)," after the reference to clause "(ii)(F)" so that the paragraph now reads as follows:

"3. Section 274.202 of the Commission's Interim Regulations is amended in paragraph (d)(2)(ii) by redesignating clause (ii)(C) as (ii)(E) and clause (ii)(D) as (ii)(F), by changing (C) to (E) in clause (ii)(F), and by inserting new clauses (ii)(C) and (ii)(D) to read as follows:"

FOR FURTHER INFORMATION CONTACT: Scott E. Koves, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8317.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39600 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) filed for Custom Feed Blenders Corp., providing for use of a 10-grams-per-pound tylosin premix for making complete swine feeds, and to add this firm to the list of approved NADA sponsors.

EFFECTIVE DATE: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501, is the sponsor of an NADA (106–507) providing for safe and effective use of a premix containing 10 grams of tylosin (as tylosin phosphate) per pound. The premix is to be used for manufacture of complete swine feeds used to increase rate of weight gain and improve feed efficiency.

Approval of this application relies upon safety and effectiveness data contained in Elanco Product Co.'s approved NADA 12–491. Use of the data in NADA 12–491 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (see the Federal Register of December 23, 1977 (42 FR 64367)), the approval of this NADA does not require reevaluation of the safety and effectiveness data in NADA 12–491 or in NADA 106–507.

Custom Feed Blenders Corp. has not previously been included in the regulations under the list of approved sponsors. The regulations are amended to reflect this approval and to include this firm in the list of sponsors.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under

authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.	046987
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
046987	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. In Part 558, § 558.625 is amended by adding new paragraph (b)(63) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(63) To 046987: 10 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This amendment is effective December 28, 1979.

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

Dated: December 18, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-39412 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Dexamethasone Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) filed by Carter-Glogau Laboratories, Division of Chromalloy Pharmaceuticals, Inc., for safe and effective use of dexamethasone injection in horses to provide a glucocorticoid and/or anti-inflammatory effect.

EFFECTIVE DATE: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Carter-Glogau Laboratories, Division of Chromalloy Pharmaceuticals, Inc., 5160 W. Bethany Home Rd., Glendale, AZ 85301, filed an NADA (110-349) providing for intravenous injection of dexamethasone in horses for rapid adrenal glucocorticoid and/or anti-inflammatory effect. The firm is sponsor of an approved NADA (104-606) which provides for use of dexamethasone sodium phosphate as an intravenous injection in horses for the same purpose.

This product is similar to Schering's dexamethasone aqueous suspension (NADA 11-901V, originally approved December 7, 1959) and sterile solution (NADA 12-559V, originally approved March 29, 1961). These products were among several that were the subject of a National Academy of Sciences/National Research Council (NAS/NRC) report published in the Federal Register of April 12, 1969 (34 FR 6447). The NAS/NRC report concluded, and the agency concurred, that these drugs are effective as anti-inflammatory agents for dogs, cats, horses, and cattle, and for primary bovine ketosis. In addition, the report stated that the products may be used as supportive therapy for certain other conditions. Supplemental NADA's were invited to provide revised labeling limiting the conditions of use as stated in the report. Schering submitted supplemental applications to revise the labeling of these products as required by the NAS/NRC report. The supplements were approved April 6, 1971 and codified in the regulations (21 CFR 522.540(a)). Approval of NADA's for similar products does not require efficacy data as specified by § 514.1(b)(8)(ii) or § 514.111(a)(5)(vi) of the animal drug regulations (21 CFR 514.1(b)(8)(ii) or 514.111(a)(5)(vi)), but may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for generic drugs reviewed by NAS/NRC. The guideline is available at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. This document amends the regulations to reflect this approval.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) of the new animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information supporting approval of this application is available for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, (address given above) from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act, (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicne (21 CFR 5.83), § 522.540 is amended by revising paragraph (c)(2) to read as follows:

§ 522.540 Dexamethasone injection.

* * * * *

(c) * * *

(2) *Sponsor.* See Nos. 000381 and 000864 in § 510.600(c) of this chapter.

* * * * *

Effective date. This regulation is effective December 28, 1979.

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

Dated: December 18, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-39411 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY
Internal Revenue Service

26 CFR Part 1

[T.D. 7663]

Tax Treatment of Certain Short-Term Corporate Obligations and Certificates of Deposit and Similar Deposit Arrangements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations concerning the tax treatment of certain short-term corporate obligations and certificates of deposit, time deposits, bonus plans, or other deposit arrangements issued or entered into by banks or similar financial institutions. The regulations reflect a change in the position of the Internal Revenue Service with respect to the tax treatment of these types of obligations and deposits and provide the public with needed guidance.

DATES: The amendment to § 1.451–2(a)(2) of the regulations is effective for corporate obligations and certificates of deposit, time deposits, bonus plans, and other deposit arrangements issued or entered into after December 31, 1978. In general, the amendment to § 1.1232–3(b)(1)(iii)(*a*) of the regulations is effective for taxable years beginning after December 31, 1978. However, the amendment to § 1.1232–3(b)(1)(iii)(*a*) does not apply for taxable years beginning before September 19, 1979, if for the issuer's last taxable year beginning before September 19, 1978, the issuer properly applied the rules of § 1.163–4 (relating to deduction for original issue discount on certain obligations issued after May 27, 1969).

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention: CC:LR:T, 202/566–3294.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part I) under sections 451(a) and 1232(b)(1) of the Internal Revenue Code of 1954 (44 FR 54315). The amendments were proposed to clarify the tax treatment of certain short-term corporate obligations and certificates of deposit, time deposits, bonus plans, and other deposit arrangements. After consideration of all comments received in response to the notice of proposed rulemaking and at the public hearing on the proposed amendments which was held on November 1, 1979, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

The proposed regulation contained an example to be added to § 1.451–2(a)(2) of the regulations to provide that if three month's interest must be forfeited upon withdrawal or redemption before maturity of a one year certificate of deposit or similar deposit arrangement, then the earnings payable on premature withdrawal or redemption of the deposit would be substantially less when compared with the earnings available at maturity. Thus, under § 1.451–2(a)(2) such an interest forfeiture penalty would be a substantial limitation or restriction on the taxpayer's control and no interest earned on the certificate of deposit or similar deposit arrangement would be constructively received by the taxpayer before maturity. In response to a comment on the notice, paragraph 1 of this Treasury decision amends the facts of this example so that the term of the deposit is one year or less to make it clear that the rule illustrated by the example applies to certificates of deposit or similar deposit arrangements with terms of not only one year, but also with a term of less than one year.

Paragraph 2 of this Treasury decision makes several changes to the amendments that were proposed by the notice to § 1.1232–3(b)(1)(iii) of the regulations. A number of persons submitting comments urged that the effective date of the final regulations be postponed because they felt that in this case it was not appropriate to issue regulations late in 1979 affecting the tax treatment to the issuer in 1979. In response to these concerns it was decided to provide in this Treasury decision that the amendment to § 1.1232–3(b)(1)(iii)(*a*) does not apply for taxable years beginning before September 19, 1979, if for the issuer's last taxable year beginning before September 19, 1978, the issuer properly applied the rules of § 1.163–4 (relating to deduction for original issued discount on certain obligations issued after May 27, 1969). Thus, for example, if a calendar year bank or similar financial institution properly deducted original issue discount as interest and prorated or amortized the amount over the term of a certificate of deposit before January 1, 1979, it can continue to do so during 1979. In connection with these amendments normal rules for a change in method of accounting apply.

The amendments proposed by the notice to § 1.1232–3(b)(1)(iii) provided that the term of the obligation included renewal periods. The Supplementary Information in the notice indicated that the proposed amendment would thus not apply to a one year certificate of deposit or similar deposit arrangement that was renewable for a specified number of years and indicated that the tax treatment of this type of instrument would continue to be governed by § 1.1232–3A(e)(4) of the regulations. A number of comments on the notice expressed confusion about the circumstances under which renewal periods would be included in determining the term of the obligation. In response to these concerns, the proposed amendment is modified by this Treasury decision to provide that the term of the obligation includes all renewal periods with respect to which, under the terms of the obligation, the holder may either take action or refrain from taking action which would prevent the actual or constructive receipt of any interest on the obligation until the expiration of the renewal period. This rule thus parallels the rule of § 1.1232–3A(e)(4)(iii) concerning renewal periods in the case of obligations having a term of one year or less. It is illustrated by the example in § 1.1232–3A(e)(4)(iv) of the regulations.

Under sections 871 and 881 of the Code, original issue discount on certain bonds or other evidences of indebtedness with a term of six months or less are exempt from the 30% tax imposed by those sections on income not effectively connected with a United States business of nonresident alien individuals and foreign corporations. See S. Rep. No. 92–437, 92d Cong., 1st Sess. 76 (1971). Under the proposed amendment to § 1.1232–3(b)(1)(iii)(*a*), corporate obligations with a term of one year or less on which an amount based on a fixed rate of simple or compound interest is payable at maturity would not have original issue discount. Thus, because there would be no original issue discount, amounts earned on such obligations would be subjected to the 30% tax under sections 871 and 881. In order to avoid the imposition of this tax on corporate obligations with a term of six months or less and to implement Congressional intent to exempt amounts earned on such obligations from the 30% tax, the amendment proposed by the notice to § 1.1232–3(b)(1)(iii)(*a*) has been limited so that it will not apply for purposes of applying sections 871 and 881. Thus, such obligations will be treated as having original issue discount only for purposes of exempting them

from the 30% tax. For all other purposes under the Code, the obligations will not have original issue discount.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, State and local governments, and the public. These regulations will impose no new reporting or recordkeeping requirements.

Revenue Ruling 79-72

The regulations adopted by this Treasury decision apply to the time deposit certificates to which Revenue Ruling 79-72, 1979-1 C.B. 278, relating to Federal income tax treatment of interest on short-term nonnegotiable time deposit certificates issued by financial institutions where the term of the certificate overlaps the end of the holder's taxable year, applied. Therefore, this Treasury decision supersedes Revenue Ruling 79-72.

Drafting Information

The principal author of these regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly 26 CFR Part 1 is amended as follows:

Paragraph 1. Paragraph (a)(2) of § 1.451-2 is amended to read as follows:

§ 1.451-2 Constructive receipt of income.

(a) *General rule.* * * *

(2) The fact that the taxpayer would, by withdrawing the earnings during the taxable year, receive earnings that are not substantially less in comparison with the earnings for the corresponding period to which the taxpayer would be entitled had he left the account on deposit until a later date (for example, if an amount equal to three months' interest must be forfeited upon withdrawal or redemption before maturity of a one year or less certificate of deposit, time deposit, bonus plan, or other deposit arrangement then the earnings payable on premature withdrawal or redemption would be substantially less when compared with the earnings available at maturity);

* * * * *

Par. 2. Paragraph (b)(1)(iii) of § 1.1232-3 is amended by deleting the second and third sentences of subdivision (*a*) and inserting in lieu thereof three new sentences and by adding a new subdivision (*e*) at the end thereof. The new provisions read as follows:

§ 1.1232-3 Gain upon sale or exchange of obligations issued at a discount after December 31, 1934.

* * * * *

(b) *Definitions*—(1) *Original issue discount.* * * *

(iii) *Stated redemption price at maturity—(a) Definition* * * * If any amount based on a fixed rate of simple or compound interest is actually payable or will be treated as constructively received under section 451 and the regulations thereunder either—

(*1*) At fixed periodic intervals of one year or less during the entire term of an obligation, or

(*2*) Except as provided in subdivision (*e*) of this paragraph (b)(1)(iii), at maturity in the case of an obligation with a term of one year or less,

any such amount payable at maturity shall not be included in determining the stated redemption price at maturity. For purposes of subdivision (*a*)(*2*) of this paragraph (b)(1)(iii), the term of an obligation shall include any renewal period with respect to which, under the terms of the obligation, the holder may either take action or refrain from taking action which would prevent the actual or constructive receipt of any interest on such obligation until the expiration of any such renewal period. To illustrate this paragraph (b)(1)(iii), assume that a note which promises to pay $1,000 at the end of three years provides for additional amounts labeled as interest to be paid at the rate of $50 at the end of the first year, $50 at the end of the second year, and $120 at the end of the third year. * * *

* * * * *

(e) Application of definition. Subdivision (*a*)(*2*) of this paragraph (b)(1)(iii) shall not apply—

(*1*) For taxable years beginning before September 19, 1979, if for the issuer's last taxable year beginning before September 19, 1978, the rules of § 1.163-4 were properly applied by the issuer, or

(*2*) In the case of an obligation with a term of six months or less held by a nonresident alien individual or foreign corporation, but only for purposes of the application of sections 871 and 881.

(Section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: December 21, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 79-39610 Filed 12-21-79; 4:25 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplements to Virgin Islands Plan

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule.

SUMMARY: On September 11, 1973 notice was published in the Federal Register (38 FR 24896), of the approval of the Virgin Islands Plan and adoption of Subpart S of Part 1952 containing the decision and describing the plan. The Virgin Islands has submitted supplements to the plan involving a developmental change and response to Federal program changes.

Notice is hereby given that the following developmental step and Responses to Federal Program Changes are approved under the Virgin Islands State Plan: Personnel and Staffing, Walkaround Pay Disputes, and Revisions to the Field Operations Manual.

EFFECTIVE DATE: December 28, 1979.

ADDRESSES: Copies of these supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Technical Data Center, Occupational Safety and Health Administration, Room N2439, 200 Constitution Avenue N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Department of Labor, Occupational Safety and Health Division, Bldg., No. 2 2nd Floor, Government Complex, Rm. 207, Lagoon St., Frederiksted, St. Croix, Virgin Islands 00840.

FOR FURTHER INFORMATION CONTACT: Mabel Stanton, Project Officer, Department of Labor, Occupational Safety and Health Administration, 2100

M Street, N.W., Rm. 149, Washington, D.C. 20210 (202) 653-5375.

Supplementary Information

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act), for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 11, 1973 notice was published in the Federal Register (38 FR 24896) of the approval of the Virgin Islands Plan and adoption of Subpart S of Part 1952 containing the decision and describing the plan. The Virgin Islands has submitted supplements to the plan involving a developmental change and response to Federal program changes. (See Subparts B and C, 29 CFR Part 1953).

Description of Supplements

(1) *Personnel and Staffing:* This supplement contains an organizational chart; job descriptions for the Virgin Islands employees of the Division of Occupational Safety and Health; certification by Regional Civil Service Commission that a procedure has been developed by the Virgin Islands Personnel Office for rating and ranking candidates; an Affirmative Action Plan for Equal Employment Opportunity approved by the Civil Service Commission, which "... contains the basic elements for a sound program ... includes provisions for identifying needs and establishing goals and assigns responsibility for action items...." In response to a problem of understaffing, this supplement also contains a State-initiated change which presents the staffing commitment in the more flexible terms of a range from two to five compliance positions of which a minimum of two will be filled at the journeyman level.

(2) *Walkaround Pay Disputes:* Amends the Virgin Islands Regulation on Discrimination Against Employees Exercising Rights Under 24 V.I.C., 40(c) by substituting language essentially identical to the Federal 29 CFR 1977.21, as amended September 20, 1977.

(3) *Revisions to the Field Operations Manual:* This change reflects an updating of Chapters VIII, X, XI, and XII through September 1977, which effects a change to the penalty calculation and assessment procedures previously in use. In proposing penalties, the Virgin Islands mirrors the OSHA procedures currently in use for both serious and other-than-serious violations.

Public Participation

Under § 1953.2(c) of this chapter the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Virgin Islands plan supplements described above are consistent with commitments contained in the approved plan, which were previously made available for public comment. Accordingly, it is found that further public comment is unnecessary.

Decision

After careful consideration, the Virgin Islands plan supplements described above are hereby approved under Subparts B and C of Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, Subpart S of 29 CFR Part 1952 is hereby amended to reflect these approved plan changes by adding a paragraph (i) to § 1952.254 and creating a new § 1952.255 "Changes to Approved Plans":

§ 1952.254 Completed developmental steps.

* * * * *

(i) The Virgin Islands has developed (1) an acceptable organizational chart; (2) job descriptions for V.I. occupational safety and health employees which meet the necessary requirements; (3) a procedure to correct a problem of understaffing in the V.I. in terms of plan commitment; (4) a procedure for rating and ranking candidates; and (5) an Affirmative Action Plan for Equal Employment Opportunity acceptable to CSC.

§ 1952.255 Changes to approved plans.

(a) In accordance with Part 1953, Subpart C of this Chapter, the following Virgin Islands plan changes were approved by the Assistant Secretary on December 20, 1979.

(1) The Virgin Islands amended its Regulation on Discrimination Against Employees Exercising Rights under 24 V.I.C. sec. 40(c) to assure payment to employees for time engaged in walkaround activities in accordance with Federal regulations.

(2) The Virgin Islands amended Chapters VIII, X, XI, and XII through September 1977, changing the penalty calculation and assessment procedures to mirror OSHA procedures currently in use for both serious and other-than-serious violations.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Washington, D.C., this 20th day of December 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-39612 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets Control.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purpose of the amendments is to add interpretative provisions to the Regulations. The need for the amendments is to make it clear that extensions of credit to Iran, except for fully collateralized trade credits, by persons subject to U.S. jurisdiction are covered by the prohibitions of § 535.201, and that transfers of blocked accounts from demand to interest-bearing status at the instruction of the depositor are authorized under § 535.508. The effect of the amendments is that these interpretations will now be available in published form.

EFFECTIVE DATE: December 26, 1979.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0236.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable.

The interpretation contained in § 535.419 will clarify the fact that the prohibitions of § 535.201 prohibit any person subject to the jurisdiction of the United States from extending credit to Iran or an Iranian entity after the "effective date" (i.e., November 14, 1979) in the absence of a license. This prohibition applies to post-effective date renewals of credits in existence on November 14, 1979. The prohibition applies regardless of the currency in which the credit was to be denominated. It does not apply to fully collateralized trade credits in view of § 535.901.

Section 535.420 clarifies the fact that Iranian owners of blocked assets are authorized by § 535.508 to instruct banks holding their accounts to transfer funds from demand to interest-bearing status at any time.

31 CFR Part 535 is amended as follows:

1. § 535.419 is added to read as follows:

§ 535.419 Extensions of credit to Iran.

(a) § 535.201 prohibits the unlicensed extension of credit to Iran or any Iranian entity, by persons subject to the jurisdiction of the United States, after the effective date.

(b) This prohibition applies to the unlicensed renewal of credits in existence on the effective date.

(c) This prohibition applies to credit extended in any currency.

(d) In view of the provisions of §§ 535.566 and 535.901, the prohibition does not apply to trade credits which are fully collateralized in foreign currency or in unblocked U.S. dollars received after the effective date.

2. § 535.420 is added to read as follows:

§ 535.420 Transfers of accounts under § 535.508 from demand to interest-bearing status.

§ 535.508 authorizes transfer of a blocked demand deposit account to interest-bearing status at the instruction of the Iranian depositor at any time.

[Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. No. 12170, 44 FR 65729.]

Dated: December 26, 1979.

Stanley L. Sommerfield,

Director, Office of Foreign Assets Control.

Approved:

Richard J. Davis,

Assistant Secretary.

[FR Doc. 79-39809 Filed 12-27-79; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 536 and 538

[AR 37-103]

Military Payment Certificates

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This amendment revises the regulation on the use of Military Payment Certificates in overseas areas. The regulation was rewritten to update the content of this rule currently published in 32 CFR 536.79 thru 536.87 and to transfer it to 32 CFR Part 538. Time limit on filing claims for the conversion of invalidated military payment certificates is set forth in § 538.5(a).

EFFECTIVE DATE: December 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Keetay, Autovon 699–3001/ Area Code 317–542–3001 or write: Commander, U.S. Army Finance and Accounting Center, ATTN: DACA–FAY–D, Indianapolis, Indiana 46249.

Dated: December 3, 1979.

P. E. Anderson,

Lieutenant Colonel, U.S. Army, Acting Chief, Field Services Office, U.S. Army Finance and Accounting Center.

Accordingly, 32 CFR, Chapter V is amended as set forth below:

§ 536.79–536.87 [Deleted]

1. Sections 536.79 through 536.87 deleted and reserved.

2. Part 538 is added to read as follows:

PART 538—MILITARY PAYMENT CERTIFICATES

Sec.

538.1 Definitions.
538.2 Use of military payment certificates.
538.3 Restrictions on possession and use.
538.4 Convertibility of military payment certificates.
538.5 Conversion of invalidated military payment certificates.
538.6 Claims.

Authority: Sec. 3, 58 Stat. 821, as amended; 31 U.S.C. 492c, unless otherwise noted.

§ 538.1 Definitions.

(a) *United States dollar instruments.* For the purpose of this section, United States dollar instruments include the following:

(1) United States Treasury checks (standard dollar checks) drawn on the Treasurer of the United States by authorized finance and accounting officers.

(2) Travelers' checks issued by the American Express Company; Bank of America, National Trust and Savings Association; Mellon National Bank and Trust Company; Citibank of New York; Thomas Cook and Son (Bankers) Ltd.; and the First National Bank of Chicago, when expressed in United States dollars.

(3) United States military disbursing officers' payment orders.

(4) American Express Company money orders, when expressed in United States dollars, and United States postal money orders.

(5) Telegraphic money orders, when expressed in United States dollars.

(b) *Military Payment Certificate (MPC).* The military payment certificate is an instrument, denominated in U.S. dollars and fractions thereof, that may be used as the official medium of exchange in U.S. military establishments located in overseas areas when such areas are designated as "Military Payment Certificate Areas."

(c) *Authorized Personnel.* As used herein, the term "authorized personnel" means all individuals authorized to purchase goods, supplies and services from U.S. Government sponsored and controlled facilities located and operated in an MPC area.

§ 538.2 Use of military payment certificates.

(a) *Areas in which used.* Military payment certificates are to be used only in the Department of Defense by authorized personnel in designated MPC areas. A Military Payment Certificate Area is a particular foreign country(s), or a specific area within a foreign country, that has been officially authorized for designation as an MPC area.

(b) *Disbursement of military payment certificates.* Military payment certificates will be disbursed to authorized personnel for all items of pay and allowances and for all other authorized payments to individuals in and under the Department of Defense.

(c) *Facilities in which used.* Military payment certificates are the only authorized medium of exchange in the following facilities:

(1) Army, Navy, and Air Force sales and services installations and activities.

(2) Theaters and other entertainment facilities operated by Department of Defense.

(3) Officers' and enlisted personnel messes and clubs, including American Red Cross installations.

(4) Army, Navy, and Air Force postal installations for purchase of postal money orders and stamps, and cashing of postal money orders.

(5) Contribution to all authorized charitable appeals, church collections, and chaplain's funds when remittance is to be forwarded to the United States through Department of Defense channels.

(6) Payments to all travel agencies, radio, cable, telegraph, and telephone companies, and all other similar facilities when remittance is to be forwarded to the United States through Department of Defense channels.

(7) All other official agencies, quasi-official and private agencies of or working in behalf of United States Army Forces providing goods, services, and facilities to members of the United States Armed Forces.

§ 538.3 Restrictions on possession and use.

(a) *Possession or use prohibited.* Possession or use of military payment certificates is prohibited unless acquired in accordance with §§ 538.1–538.4 and such additional regulations as may be issued by the major overseas commander concerned.

(b) *Not to violate directives.* Acquisition, possession, and use of military payment certificates incident to normal legitimate transactions within the Department of Defense must not violate Department of the Army or major overseas command directives or the Uniform Code of Military Justice.

(c) *Acceptance, transfer, or exchange.* Under no circumstances will military payment certificates be accepted from, transferred to, or exchanged for persons other than authorized personnel. Military payment certificates will not be accepted or exchanged after the date specified by the Secretary of the Army as the last day for their acceptance or exchange.

(d) *Transmission through mail.* Individuals are prohibited from transmitting military payment certificates through the mail to any areas other than those designated as an MPC area. Military payment certificates may be transmitted to authorized personnel or official agencies by mail within or between designated MPC areas.

§ 538.4 Convertibility of military payment certificates.

(a) *For authorized personnel.* Authorized personnel having in their possession military payment certificates that were acquired legitimately may exchange those certificates for U.S. currency, coin, or dollar instruments, including U.S. Treasury dollar checks under the following conditions:

(1) Upon departure for the United States.

(2) When traveling under competent orders to areas where military payment certificates are not designated for use.

(3) When traveling under competent orders to military payment certificate areas where finance and accounting officers, Class "B" Agent Officers, including military attache agent officers, or exchange facilities are not readily available to the traveler.

(b) The provisions of this section will not be construed as authorizing finance and accounting officers or their agents in areas outside of military payment certificate areas to convert military payment certificates for authorized personnel returning from MPC areas. Such exchange must be made prior to departure from the MPC area.

(c) *Conversion of Military Payment Certificates suspected of being acquired illegitimately.* Military payment certificates will not be converted for any holder under circumstances where there are reasonable grounds to believe that the holder was not an authorized person at the time of acquisition or that the certificates were acquired by the holder, or by another with the holder's knowledge, from a person not authorized to possess or use them. Amounts of certificates exceeding those which the holder would normally acquire or hold under applicable circumstances as prescribed by local regulations will not be approved for conversion unless the holder shows by a preponderance of evidence that they were acquired legitimately. Where there are reasonable grounds to believe that the military payment certificates were not acquired legitimately, they will be impounded and retained pending an administrative determination as to the source of acquisition. If it is determined that the individual concerned was not an authorized person at the time of acquisition, the certificates will be confiscated and the dollar proceeds deposited in the Treasury to the General Fund (Miscellaneous) Receipt Account 211099, "Fines, penalties and forfeitures not otherwise classified." If it is determined that the individual concerned was an authorized person at the time of acquisition, or that the certificates belong to an authorized person, the certificates or their dollar value will be returned to the owner unless there are reasonable grounds to believe the certificates were acquired by the holder or another with the holder's knowledge from an unauthorized person. If it is determined that the certificates were acquired from an unauthorized person, the certificates will be confiscated and the dollar proceeds deposited in the Treasury to the General Fund (Miscellaneous) Receipt Account 211099, "Fines, penalties and forfeitures not otherwise classified." Collection vouchers affecting these deposits will cite claimants' names and sufficient information to permit ready identification of the deposits in order to facilitate the processing of any subsequent claims for amounts so deposited.

(d) *Transactions with disbursing officers of other services.* Dollar instruments may be exchanged for military payment certificates or military payment certificates for dollar instruments in transactions with Navy and Air Force disbursing officers and their agents. Major overseas commanders may specifically authorize such transactions with other disbursing officers of the United States Government and their agents.

§ 538.5 Conversion of invalidated military payment certificates.

(a) *When converted.* Time limit on filing claims for the conversion of invalidated Series 461, 471, 472, 481, 521, 541, 591, 611, 641, 651, 661, 681, and 692 expires on 30 September 1980.

(b) *When found in effects of deceased personnel.* Invalidated series of military payment certificates in amounts not in excess of $500, found in the effects of deceased personnel or personnel in a missing status, will be converted into a Treasury check. Such military payment certificates will be converted only if date of death or entry into missing status was prior to the date the series of military payment certificates was withdrawn from circulation. The Treasury check will be disposed of in accordance with regulations governing disposition of effects of deceased or missing personnel. Amounts in excess of $500 will be forwarded by the summary court officer to the U.S. Army Finance and Accounting Center for decision regarding exchange of such certificates.

(c) *Disposition when received with claim.* Under no circumstances will invalidated series of military payment certificates received with claims for conversion be taken up in the accounts of the finance and accounting officer. Such certificates will be held in safekeeping until decision is made. If the claim is disapproved, the certificates will be returned to the claimant. In the event these certificates are again received by the finance and accounting officer as undeliverable and reasonable efforts fail to locate the claimant, the certificates will be held for a period of 6 months after which time the proceeds of the certificates will be deposited in the Treasury to the General Fund (Miscellaneous) Receipt Account 211060, "Forfeitures of unclaimed money and property."

§ 536.6 Claims.

Claims for conversion of military payment certificates, as well as claims arising out of the refusal of the overseas command to convert military payment certificates, will be referred to the U.S. Army Finance and Accounting Center, ATTN: FINCY–D, Indianapolis, Indiana 46249. The U.S. Army Finance and Accounting Center will adjudicate and make final determination on all claims.

[FR Doc. 79-39501 Filed 12-27-79; 8:45 am]
BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces an increase in the contracting authority that may be delegated to certain managers for minor repairs and improvements. In addition, the Service prescribes policies and procedures for procurement of architect-engineer services.

EFFECTIVE DATE: January 14, 1980.

FOR FURTHER INFORMATION CONTACT:
William J. Jones, (202) 245–4603.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which has been incorporated by reference in the Federal Register (see 39 CFR 601.100), has been amended by the issuance of Transmittal Letter 30, dated December 15, 1979.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the Federal Register as an amendment to that section and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers of the basic Manual will receive these amendments from the Government Printing Office. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

Description of these amendments to the Postal Contracting Manual follows:

1. Paragraph 1–407.2(b)(2)(ii) has been revised to reflect an increase in the contracting authority that may be delegated to Managers, Procurement Services Offices (PSO's), for minor repairs and improvements.

2. Part 6 of Section 18 has been added to prescribe policies and procedures for procurement of architect-engineer services.

In consideration of the foregoing, 39 CFR 601 is amended by adding the following to § 601.105:

§ 601.105 Amendments to the Postal Contracting Manual.

Transmittal letter	Dated	Federal Register publication
* * * * * * *		
30	Dec. 15, 1979	44 FR

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

W. Allen Sanders,
Associate General Counsel for General Law and Administration.

[FR Doc. 79-39670 Filed 12-27-79; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL 1366-3]

Standards of Performance for New Stationary Sources; Adjustment of the Opacity Standard for a Fossil Fuel-Fired Steam Generator

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action adjusts the NSPS opacity standard (40 CFR Part 60, Subpart D) applicable to Southwestern Public Service Company's Harrington Station Unit #1 in Amarillo, Texas. The action is based upon Southwestern's demonstration of the conditions that entitle it to such an adjustment under 40 CFR 60.11(e).

EFFECTIVE DATE: December 28, 1979.

ADDRESS: Docket No. EN–79–13, containing material relevant to this rulemaking, is located in the U.S. Environmental Protection Agency, Central Docket Section, Room 2903 B, 401 M St., SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Administrator in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT:
Richard Biondi, Division of Stationary Source Enforcement (EN–341), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone No. 202–755–2564.

SUPPLEMENTARY INFORMATION:

Background

The standards of performance for fossil fuel-fired steam generators as promulgated under Subpart D of Part 60 on December 23, 1971 (36 FR 24876) and amended on December 5, 1977 (42 FR 61537) allow emissions of up to 20% opacity (6-minute average), except that 27% opacity is allowed for one 6-minute period in any hour. This standard also requires continuous opacity monitoring and requires reporting as excess emissions all hourly periods during which there are two or more 6-minute periods when the average opacity exceeds 20%.

On December 15, 1977, Southwestern Public Service Company (SPSC) of Amarillo, Texas, petitioned the Administrator under 40 CFR 60.11(e) to adjust the 20% opacity standard applicable to its Harrington Station coal-fired Unit #1 in Amarillo, Texas. The Administrator proposed, on June 29, 1979 (44 FR 37960), to grant the petition for adjustment, concluding that SPSC had demonstrated the presence at its Harrington Station Unit #1 of the conditions that entitle it to such relief, as specified in 40 CFR 60.11(e)(3).

These final regulations are identical to the proposed ones. EPA hereby grants SPSC's petition for adjustment for Harrington Station Unit #1 from compliance with the opacity standard of 40 CFR 60.42(a)(2). As an alternative, SPSC shall not cause to be discharged into the atmosphere from the Harrington Station Unit #1 any gases which exhibit greater than 35% opacity (6-minute average), except that a maximum of 42% opacity shall be permitted for not more than one 6-minute period in any hour. This adjustment will not relieve SPSC of its obligation to comply with any other federal, state or local opacity requirements, or particulate matter, SO_2 or NO_x control requirements.

Comments

Two comment letters were received, both from industry and both supporting the proposed action. One industry representative approved of EPA efforts to adjust NSPS to account for well-known opacity difficulties found in large steam electric generating units which have hot side electrostatic precipitators and combust low-sulfur western coal.

A second industry representative suggested that the use of Best Available Control Technology on coal-fired units has not assured compliance with applicable opacity standards, and that opacity standards do not complement standards for particulate emissions. EPA disagrees with this comment. Violations of opacity standards generally reflect violations of mass emission standards, and EPA will continue to impose opacity standards as a valued tool in insuring proper operation and maintenance of air pollution control devices.

Miscellaneous

This revision is promulgated under the authority of Section 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411 and 7601(a)).

Dated: December 17, 1979.

Douglas M. Costle,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

40 CFR part 60 is amended as follows:

Subpart D—Standards of Performance for Fossil Fuel-Fired Steam Generators

1. Section 60.42 is amended by adding paragraph (b)(1) as follows:

§ 60.42 Standard for particulate matter.

(a) * * *

(b)(1) On and after (the date of publication of this amendment), no owner or operator shall cause to be discharged into the atmosphere from the Southwestern Public Service Company's Harrington Station Unit #1, in Amarillo, Texas, any gases which exhibit greater than 35% opacity, except that a maximum of 42% opacity shall be permitted for not more than 6 minutes in any hour.

(Sec. 111, 301(a), Clean Air Act as amended (42; U.S.C. 7411, 7601))

2. Section 60.45(g)(1) is amended by adding paragraph (i) as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(g) * * *

(1) * * *

(i) For sources subject to the opacity standard of § 60.42(b)(1), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 35 percent opacity, except that one six-minute average per hour of up to 42 percent opacity need not be reported.

[FR Doc. 79-39509 Filed 12-27-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1376-3]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Attainment Status: Alameda County, Calif.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice revises the attainment status designation of Alameda County for total suspended particulates (TSP). The revision is the result of (a) a request from the State Air Resources Board (ARB) to redesignate Alameda County to attainment for TSP, and (b) the absence of detected violations during the most recent eight consecutive quarters (1977 and 1978) for which data are available. Alameda County is redesignated from nonattainment (primary) to attainment for TSP.

DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Rodney L. Cummins, Chief, Technical Analysis, Section (A-4-3), Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 556-2002.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977, Pub. L. 95-95, added to the Clean Air Act (CAA) section 107(d), which directed each State to submit to the Administrator of the EPA a list of the National Ambient Air Quality Standards (NAAQS) attainment status of all areas within the State. The Administrator was required under section 107(d)(2) to promulgate the State lists, with any necessary modifications.

For each NAAQS, areas are classified as either (1) not attaining the standard or, for certain pollutants, projected not to maintain the standard (nonattainment areas), (2) meeting the standard (attainment areas), or (3) lacking sufficient data or information to be classified (unclassified areas). The EPA published these lists on March 3, 1978 (43 FR 8962). At that time Alameda County was classified nonattainment (primary) for TSP (40 CFR 81.305).

Under section 107(d)(5) of the CAA, as amended, a state may revise its designations of attainment status and submit them to the EPA for promulgation.

An August 14, 1979 letter from the ARB states that Livermore, the station upon which Alameda County's nonattainment status had been based, has demonstrated compliance for more than eight quarters with the national TSP primary standards and with the 24-hour national TSP secondary standard. The ARB further states that Fremont, the other Alameda County monitoring station with complete data, has also demonstrated compliance with those TSP standards for the eight quarters of 1977 and 1978. The ARB therefore redesignated Alameda County as attainment for TSP.

On September 27, 1979 (44 FR 55602), the EPA published a Notice of Proposed Rulemaking, proposing to redesignate Alameda County as attainment for TSP and inviting public comments on that proposal. One comment was received, agreeing with the EPA's analysis and encouraging expeditious final action.

Based upon a review of the TSP air quality data for Alameda County, the EPA finds that the NAAQS for TSP have been attained.

As a result of this redesignation, the requirements of Title I, Part D (Plan Requirements for Nonattainment Areas) of the CAA, as amended, no longer apply in Alameda County for TSP.

The EPA has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

(Sec. 107(d) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d) and 7601(a)))

Dated: December 17, 1979.

Douglas M. Costle,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.305 [Amended]

1. In § 81.305—California, the attainment status designation table for TSP is amended as follows:

A. In the California—TSP table published in the Federal Register on September 12, 1979 (44 FR 53081), the designation of Alameda County is amended. The amended portion of the TSP table for § 81.305 reads as set forth below:

California—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* *	*	*	*	*
Alameda County.				X
* *	*	*	*	*

[FR Doc. 79-39507 Filed 12-27-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 434

[FRL 1381-4]

Coal Mining Point Source Category Effluent Limitations Guidelines for Existing Sources and Standards of Performance for New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rules.

SUMMARY: These regulations establish an exemption from otherwise applicable effluent limitations guidelines and new source performance standards for the coal mining point source category. The exemption applies to increases in the volume of discharges, overflows and discharges from by-pass systems, caused by precipitation or snowmelt, from facilities meeting the criteria set forth in the exemption.

EFFECTIVE DATE: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: William A. Telliard, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 426-2707.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1977, EPA promulgated final effluent limitations guidelines, based on best practicable control technology currently available (BPT) for existing sources in the coal mining point source category. 42 FR 46932. These regulations included the following exemption from otherwise applicable requirements:

> Any untreated overflow, increase in volume of a point source discharge, or discharge from a by-pass system from facilities designed, constructed and maintained to contain or treat the discharges from the facilities and areas covered by this subpart which would result from a 10-year 24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section. 40 CFR 434.22(c), 434.32(b), and 434.42(b).

Thereafter, on January 12, 1979, the Agency promulgated new source performance standards (NSPS) applicable to new sources in the coal mining point source category. 44 FR 2586. These regulations contained a storm exemption which differed from the BPT exemption. The NSPS exemption provided:

> *Upon satisfactory demonstration by the discharger,* any overflow, increase in volume of a discharge, or discharge from a by-pass system, *resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume,* from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section. 40 CFR 434.25(b), 434.35(b), and 434.45(b). (emphasis added).

As the underscored language indicates, the NSPS exemption differed from the BPT exemption in that (1) the burden of proof was placed on the operator to demonstrate that the preconditions to an exemption had been met, and (2) an exemption could only be granted if a 10-year/24-hour or larger precipitation event (or snowmelt of equivalent volume) actually occurred. In contrast, the BPT storm exemption required only that the treatment facility be designed, constructed, and maintained to contain or treat a given volume of water; there was no requirement that a precipitation event (or snowmelt) of a given magnitude occur.

As stated in the preamble to the NSPS regulations, the Agency had not viewed these two provisions as substantially different. Therefore, the Agency announced that the BPT regulations would be amended to conform to the NSPS storm exemption provision. 44 FR at 2588. Accordingly, on April 2, 1979, EPA amended the BPT storm exemption provisions. 44 FR 19193. As stated in the preamble to the BPT amendment, the Agency also took that action to make its regulations consistent with regulations promulgated by the Department of the Interior, through the Office of Surface Mining (OSM), pursuant to the Surface Mining and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87.

Subsequent to these actions, the Agency received substantial criticism of the NSPS and revised BPT storm exemption provisions. The National Coal Association (NCA) filed a petition for review in the United States Court of Appeals for the Fourth Circuit challenging the BPT revision, and filed a similar petition in the Third Circuit challenging the NSPS storm exemption. In addition, the NCA and American Mining Congress (AMC) have filed a petition for review in the District Court for the District of Columbia challenging, among other things, the OSM's storm exemption provision. They have also directly petitioned the OSM requesting it, among other things, to reconsider its storm exemption.

Industry claims that, regardless of EPA's original intent, there is a vast difference between granting relief to a facility designed, constructed and maintained to contain or treat the volume of water that would result from a 10-year 24-hour precipitation event, as opposed to requiring, in addition, that specific effluent limitations be achieved during all storm events short of the 10-year 24-hour event. It has argued that the Agency's data supporting the BPT and NSPS limitations is based on "average" (i.e., non-storm) flow conditions, and provides no support for the requirement that the limitations be attained during all storms smaller than a 10-year 24-hour storm.

In order to air these issues and develop a more fully informed administrative record, on July 6, 1979, the Agency initiated a new rulemaking proceeding, and suspended that portion of the exemptions which required that a 10-year 24-hour or larger precipitation event (or equivalent snowmelt) actually occur. 44 FR 39391. Concurrently, EPA established a two-stage public comment process. First, it solicited comments for thirty days on the general issues posed by the various storm provisions, and particularly solicited alternative suggestions. In addition, the Agency announced that it was incorporating into its record certain materials cited and discussed in the preamble to OSM's regulations regarding this issue, and solicited comments on that material as well.

Subsequently, on August 14, 1979, the Agency circulated and made available for public comment two new technical reports concerning this issue. 44 FR 47595. These reports were "Evaluation of Performance Capability of Surface Mine Sediment Basins," prepared by Skelly and Loy, and "Evaluation of Sedimentation Pond Design Relative to Capacity and Effluent Discharge," by D'Appolonia Consulting Engineers, Inc. At the request of several persons, the Agency extended the comment period on these studies to October 19, 1979. 44 FR 55223 (September 25, 1979). As a result of that extension and the need to adequately address the issues and comments, the Agency extended this rulemaking to December 21, 1979. 44 FR 64082 (November 6, 1979). The regulations promulgated today are based on the record developed in the above rulemaking process and the previous rulemaking proceedings concerning the Agency's BPT and NSPS regulations.

The legal authority for these regulations include sections 306, 301, and 304 of the Clean Water Act, as amended, 33 U.S.C. 1316, 1311, and 1314, and is discussed in detail in the preambles to EPA's BPT and NSPS regulations.

Summary and Basis of Regulations; Treatment Technology and the Need for a Storm Exemption

The water pollution problems and treatment technologies prevalent in coal

mining and processing operations are discussed in detail in EPA's "Development Document for Interim Final Effluent Limitations Guidelines and New Source Performance Standards" (May, 1976), previously made available for public comment, and in the preambles to the Agency's BPT and NSPS regulations. The following discussion provides a summary of that material and the supplemental reports and comments received by the Agency since July 6, 1979.

Process waste waters generated from coal preparation plants include fine coal and mineral particles such as clays, which may remain suspended in the waste water and cause serious pollution problems for receiving waters. Water is not generally used in, and in fact interferes with, coal mining operations. Water enters surface and underground mines through precipitation, ground water infiltration and surface runoff, and can become polluted by contacting materials in the coal, overburden materials and mine bottom. Water which enters mining areas is generally pumped out and discharged after treatment to receiving waters. Management of mine drainage is an integral part of mine planning and engineering.

Water which carries mining-related pollutants may cause serious environmental harm if discharged directly to streams and rivers. Of primary concern are solids; mining operations, particularly surface mining operations, frequently generate large volumes of sediment, which may be washed away by water passing through the mine.

The elementary technique for removing suspended solids from mine drainage and preparation plant process waste water involves the use of a sediment basin. The polluted water is diverted to one or a series of ponds, where natural gravitational settling results in removal of solids. The clarified water is then decanted and discharged. In addition, raw mine drainage in some areas of the country and raw process waste water may be highly acidic or contain unacceptable levels of metals, which may require pH adjustment and chemical precipitation, primarily by using lime, in conjunction with removal of suspended solids. In addition, many facilities recycle all or part of their preparation plant process waste water.

A sediment pond operates on the principle that as the sediment loaded water passes through the pond, the solid particles will settle to the bottom and be trapped. The particle will accelerate vertically until the friction with the fluid is approximately equal to the impelling force, at which time the particle will reach a constant velocity known as the settling velocity (Vs). Settling velocity is a function of the density, size and shape of the particle and viscosity of the fluid, as defined by Stoke's Law.

The size of a particle greatly affects its settling velocity. For example, whereas a 10 mm particle requires 0.3 seconds to settle one foot, a particle of .001 mm requires 35 hours to settle the same distance (Hill, 1976). Thus, in designing and sizing a sediment pond, the minimum particle size to be removed is critical. The basin must be designed so that all particles having a settling velocity equal to Vs will be detained in the pond long enough to settle. The basic equation can be expressed as: $Vs = Q/A$ where A is the surface area of the pond (m^2) and Q is the overflow rate or hydraulic load on the pond (m^3/sec). (Hill, 1976).

Thus, in order to meet a specific TSS effluent quality, the pond will have to be constructed and operated to detain sediment-laden water long enough to settle all particles of a specific size (and larger). This "detention time" is a critical factor in sediment pond efficiency and effluent quality, and is a function primarily of the pond surface area and flow rate into the pond.

The effectiveness of a given sediment pond will depend upon the specific design features and practices employed to optimize detention time. For example, the pond should be designed and operated to maximize the opportunity for quiescent settling of solids; minimize turbulence which can stir up solids off the bottom of the pond; reduce the potential impacts of climatological factors such as wind; and minimize the potential for "short-circuiting"—that is, the condition where influent to the pond may move rapidly to the discharge point without being detained in the pond long enough to permit optimal settling of solids.

Further, the pond must be of a large enough capacity to handle the mine drainage which can be expected to flow into it from the relevant drainage area. The location of a given pond is thus also an important factor, since large volumes of sediment-bearing storm runoff can inundate a well-designed facility and substantially diminish the pond's effectiveness. However, the location of the pond will often be constrained by topographical factors; particularly (but not solely) in the steep-sloped terrain of Appalachia, a sediment pond may have to be located in valleys or ravines which collect large volumes of sediment-laden drainage during even routine storms.

Consequently, the Agency has always recognized the need for relief from BPT and NSPS requirements during some storm conditions. The original BPT provision gave relief if the operator experienced an overflow, increase in volume of a discharge or discharge from a bypass system caused by *any* precipitation event, if the operator had designed, constructed, and maintained the facility to contain or treat a given volume of water—the volume which would result from a 10-year 24-hour storm. However, the issue raised by the NSPS and revised BPT storm exemptions is whether sufficient information exists to require, in addition, that a storm event of a particular magnitude occur as an additional prerequisite to an exemption.

As the Skelly and Loy report indicates, and as several public comments and other record material confirm, sediment pond efficiency during storm events is, to a large extent, dependent on site-specific factors. The inflow hydrograph (i.e., the volume of water delivered to a pond at any given moment during or immediately after a storm) of a given storm event, and the volume and concentration of sediment delivered, will depend in each case on, among other things, the soil erodibility, length and steepness of the terrain, and cover and management practices employed at a given watershed.

Moreover, the specific total suspended solids concentration in the effluent of a given sediment pond will depend on the particle size distribution of the solids delivered to the pond. As the Skelly and Loy study demonstrates, theoretical detention times in excess of 24 hours may not be sufficient to permit settling of fine, colloidal solids. Thus, as that study shows, even if all of the larger solids settle, TSS effluent concentrations can vary widely depending upon the amounts of fine material present in the influent. The particle size distribution of the sediment delivered at a particular site is thus a critical factor, largely beyond the control of the operator, affecting effluent quality. This distribution will vary not only from site to site for a given storm event, but at the same site during the course of that storm.

It is therefore an extremely difficult task to determine a particular magnitude storm event during which the BPT and NSPS effluent limitations can be achieved on a generic basis. Although the record contains some data demonstrating compliance during storms, these data do not provide a systematic basis to impose any

particular storm event as the generic test for obtaining an exemption.

The Agency is now in the process of remedying this information gap. In cooperation with the National Coal Association and its member companies, EPA is engaged in a monitoring program at approximately 12 representative surface coal mines across the country. As part of this program, the participating companies are required to take influent and effluent samples during and after storm events. The Agency expects that this information will provide a systematic basis to determine (1) during which storms the BPT and NSPS requirements can be met, and (2) if those requirements cannot be met during some storms, what limitations on settleable solids (generally recognized as 20 microns or larger) may be reasonable. In addition, the Agency recognizes that removal of the finer materials may be possible with the use of chemical flocculants or other treatment. As the Agency has stated previously, such treatment has not generally been in use for coal mine drainage in the past, and hence the BPT effluent limitations guidelines and new source performance standards were not based on flocculation. However, as part of its ongoing efforts to promulgate BAT/BCT regulations, the Agency is examining the feasibility and treatment potential of flocculants, and the extent to which their use may bear on the storm exemption issue. It is expected that the Agency will propose BAT, BCT, and revised NSPS regulations for this industrial category in the spring of 1980. At that time, the Agency may also propose a revised storm provision, based upon the results of the monitoring program previously discussed.

However, until these empirical data are collected and reviewed, the Agency believes it appropriate to utilize the results of the Skelly and Loy report. Skelly and Loy utilized a computer model known as DEPOSITS (Deposition Performance of Sediment in Trap Structures), developed by the University of Kentucky, to predict the effluent quality which would result from sediment ponds designed according to OSM's design criteria at six representative coal mines in Appalachia during 10-year, 5-year, and 2-year 24-hour storm events. During the 5-year and 10-year events, all ponds modeled fail to meet the BPT and NSPS requirements for total suspended solids (TSS) by a large margin. During the 2-year storm event, the model predicts that there will be no TSS in the effluent. This is due to the model's assumption of "plug flow"—that is, it assumes that water is discharged on a "first in, first out" basis. As a result, the DEPOSITS model predicts that a 2-year storm will merely displace the standing pool of water previously in the pond, which is assumed to be perfectly clear and free of TSS. In the real world, of course, ponds do not operate on a "plug flow" basis, and any standing pool of water would not be free of TSS. There is no record basis to assume that properly operated sediment ponds can meet the BPT or NSPS requirements on a generic basis during a 2-year 24-hour storm.

Several factors corroborate the Agency's judgment to rely on the Skelly and Loy study until sufficient empirical data are collected. First, it corroborates industry's claims that, in practice, attainment of the effluent limitations during certain storm events may be difficult or impossible. Second, the comments confirm that the DEPOSITS model is a state-of-the-art technique. Third, no commenter claimed that the effluents discharged were unrealistically "worst case" results. On the contrary, several commenters confirmed that, in several critical respects, the assumptions employed lead to unrealistically ideal pond performance, and *underestimate* the TSS effluent concentrations which would result. For example, the model assumes that the pond exhibits no short circuiting. Further, it was assumed that the ponds had been recently cleaned of all sediment and the full sediment storage volume was available. The "plug flow" concept also idealizes pond performance.

Although several commenters criticized other aspects of the Skelly and Loy study—for example, the assumptions regarding particle size distributions and the use of the Modified Universal Soil Loss Equation to compute the inflow hydrograph and sediment delivery as inputs to DEPOSITS—the Agency is satisfied that the assumptions and methodologies employed were as reasonable, if not more reasonable, than the suggested alternatives. Further, if these commenters' suggestions had been used, they would only have served to make TSS effluent concentrations higher, and thus do not affect Skelly and Loy's central conclusions that the ponds cannot meet the BPT and NSPS requirements during storm events.

Thus, based on the information presently available to the Agency, EPA believes that the need for a storm exemption is clear, and that there is no reasonable way, at this time, to tie such an exemption to a storm of any particular magnitude.

Western Mines

Several commenters noted that the Skelly and Loy study focused exclusively on the Appalachian region, and therefore provide no basis for establishing an exemption for western coal mines. While it is true that topographical constraints may be more prevalent in Appalachia, other commenters have previously noted that some western mines are situated in topography similar to eastern coal fields. *See* preamble to NSPS regulations, 44 FR 2588. In addition, as commenters have also pointed out, snowmelt may pose severe problems in the west. Therefore, there is no basis at this time upon which to limit the storm exemption to a specific geographic region.

Summary of Major Changes

The storm exemptions promulgated today for BPT and NSPS are essentially the same as the Agency's original BPT storm provision, with minor modifications. First, the regulations place the burden of proof on the mine operator to demonstrate that it has met the prerequisites for an exemption—that is, that he has designed, constructed, and maintained his facility in accordance with the design criteria set forth in the exemption provision. This burden of proof requirement was contained in the original NSPS and revised BPT storm exemption, and no commenter argued against it. In fact, the comments urge the Agency to retain this requirement in order to facilitate enforcement.

Second, the regulation has been clarified to state that the operator is only entitled to an exemption if the overflow, increase in volume of a point source discharge or discharge from a by-pass system is actually caused by a hydrological event—that is, rainfall or snowmelt. This is consistent with the explicit language of the NSPS storm provision, and with the intent of the original BPT exemption as explained in the BPT preamble (*See* 42 FR 21381).

Costs and Economic Impact

The costs and economic impact of the BPT and NSPS regulations, including the storm provision promulgated today, have previously been considered in detail and discussed by EPA. See 42 FR 21383. The Agency has determined that this regulation does not require any additional economic analyses or the preparation of a Regulatory Analysis under Executive order 12044.

Coordination With Office of Surface Mining

After EPA initiated this rulemaking proceeding and circulated the Skelly and Loy and D'Appolonia studies for public comment, the NCA and AMC commenced an action against EPA in the District Court for the District of Columbia (*National Coal Association et al.* v. *EPA, Civil No. 79-2406*). In this suit, plaintiffs seek to invalidate EPA's previous concurrence in OSM's regulations, which was given on February 14, 1979, pursuant to section 501 of SMCRA. Plaintiffs claim, among other things, that OSM's storm exemption may not differ from EPA's, and that the Skelly and Loy study requires EPA to withdraw its concurrence. The Agency does not believe that the Skelly and Loy study or the regulation promulgated today requires such an action. First, the District Court has previously held that OSM's storm exemption may differ from EPA's. In *Re Surface Mining Litigation,* 456 F. Supp. 1301, 1314–15 (D.D.C. 1978). This case is presently on appeal to the Court of Appeals for the District of Columbia, and a decision is pending.

Second, the NCA and AMC have petitioned OSM to reconsider portions of its regulations in light of the Skelly and Loy study. The decision to grant or deny that petition is now pending before OSM. The agencies will work closely to minimize, to the greatest practicable extent, duplication and inconsistencies in government regulation.

Dated: December 20, 1979.

Douglas M. Costle,

Administrator.

Part 434, §§ 434.22(c), 434.32(b), 434.42(b), 434.25(b), 434.35(b), and 434.45(b) are amended to read as follows:

* * * * *

Any overflow, increase in volume of a discharge or discharge from a by-pass system caused by precipitation or snowmelt shall not be subject to the limitations set forth in paragraph (a) of this section. This exemption shall be available only if the facility is designed, constructed and maintained to contain or treat the volume of water which would fall on the areas covered by this subpart during a 10-year 24-hour or larger precipitation event (or snowmelt of equivalent volume). The operator shall have the burden of demonstrating to the appropriate authority that the prerequisites to an exemption set forth in this subsection have been met.

Appendix A—Summary of Public Participation

The storm exemption issue has been subject to public comment and review at several stages. The Agency received substantial comments on this issue during its initial BPT and NSPS rulemaking efforts. Those comments have been previously summarized and addressed by the Agency, and will not be addressed here. *See* 42 FR 21388 (April 26, 1977) (BPT) and 44 FR 2591 (January 12, 1979) (NSPS).

In addition, in its notice of July 6, 1979, the Agency solicited general comments on the storm exemption issue. 44 FR 39391. That comment period closed on August 6, 1979. Thereafter, on August 14, 1979, the Agency solicited comments on the Skelly and Loy and D'Appolonia reports. 44 FR 47595. That comment period closed on October 19, 1979. A summary of the comments received since July 6 follows.

The following parties submitted timely comments pursuant to the July 6th or the August 14th notice or both: Dow Chemical U.S.A., Mapco Coals, Inc., Monterey Coal Company, National Coal Association, Northern Energy Research Co., Pennsylvania Department of Environmental Resources, Reynolds Aluminum, James Spotts, Thorp, Reed and Armstrong, Virginia State Water Quality Control Board, and Wyoming Department of Environmental Quality.

General Comments on Storm Exemption Issue

(1) One commenter suggested that there is no need to have a storm exemption because of the infrequency of the "events or constellation of events which could justify the granting of any such exemption in an individual case." Alternatively, this commenter argued that any exemption should be limited to "truly unusual catastrophic precipitation events" in order to induce industry to improve its present treatment practices. However, the Skelly and Loy report and other data in the record suggest that it may not be feasible to meet the BPT and NSPS requirements during precipitation events. In addition, other comments pointed out that the most severe soil erosion can occur from short duration, high intensity storms which are not infrequent. It should be noted that the storm exemption is tied to a design criterion—i.e., 10-year, 24-hour storm containment or treatment—which represents an improvement over present industry practice.

(2) One commenter suggested that any exemption should apply only to total suspended solids, and not to the other pollutants (i.e., metals) covered by the regulations. The Agency does not agree with this comment. The BPT and NSPS requirements apply to total metal concentrations—that is, metals in solution (dissolved) and metals in suspension as part of the suspended solids loading. It is the judgment of the Agency's technical personnel that, given the high TSS effluent concentrations resulting from precipitation events, the total metals limitations may not be met either.

(3) Several commenters urged that any exemption be limited to mines located in Appalachia, and not apply to western mines where topography is not as constraining a factor. As discussed in the preamble, there is no basis at this time on which to make such a distinction.

(4) One commenter argued that EPA must propose specific language for public comment before promulgating a storm exemption. The Agency does not agree with this assertion. The public notice attending informal rulemaking must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved," 5 U.S.C. § 553(b)(3), but it need not specify "every precise proposal which the Agency may ultimately adopt as a rule." *California Citizens Band Association* v. *United States,* 375 F.2d 43, 48 (9th Cir.), *cert. denied* 389 U.S. 844 (1967); *Action for Children's Television* v. *F.P.C.,* 564 F.2d 458, 470 (D.C. Cir. 1977).

The notices and extensive opportunity for public comment provided on this issue meet this test. Moreover, the regulation promulgated today is virtually identical to the Agency's original BPT storm exemption; the only changes are either for purposes of clarifying the original exemption or in response to public comments. Accordingly, the public notice requirements of the Administrative Procedure Act have been fully met.

(5) Several commenters suggested that a storm exemption will not be enforceable unless tied to an actual storm event. Although tying the exemption to a specified precipitation event might facilitate enforcement, the requirement that a treatment pond be designed, constructed, and *maintained* in a specified manner will alleviate enforcement problems. Moreover, enforcement will be substantially facilitated by placing the burden of proof on the operator to demonstrate that it has met the prerequisites to an exemption. This burden of proof requirement was urged by one commenter; it was also a requirement in the Agency's NSPS and revised BPT

regulations, and no commenter argued against such a provision.

(6) One commenter suggested that effluent requirements during storm events should reflect the mirror image of the settable solids concentration entering the pond during the course of a 2-year, 24-hour storm. While this approach is theoretically sound, it would be difficult, if not impossible, to enforce. It would require the operator to take samples of influent and effluent at every step of the storm. Aside from the costs involved, this approach is obviously impractical.

(7) Several commenters stated that sediment pond performance during storm events is inherently site-specific. The Agency agrees with this comment, which is supported by the Skelly and Loy study.

(8) One commenter suggested that the Agency consider the feasibility of chemical treatment to abet suspended solids removal. The Agency is in the process of assessing the costs, feasibility, and pollution reduction benefits of chemical treatment as part of its BAT rulemaking efforts. Forthcoming BAT and revised NSPS regulations may reflect chemical treatment technology. The Agency does not believe, however, that BPT requirements should be based on chemical treatment because it is generally not practiced in the industry and insufficient data presently exists on which to base a national regulation.

(9) One commenter claimed that the Agency did not consider tying an exemption to both a design capacity and a specific flow rate, as it had stated in its July 6 Federal Register notice. This is incorrect; the Skelly and Loy study examined the performance of sediment ponds of a given capacity under different storm events, that is, under different flow rates.

(10) Several commenters urged that a settleable solids limit be established during precipitation events. The validity of such an approach is suggested by the Skelly and Loy study, which shows that properly designed and operated ponds will remove the larger (settleable) solids, but not the finer, colloidal material. Therefore, the Agency is now undertaking a sampling program, in cooperation with industry, to determine what settleable solids limitation may be appropriate during storm conditions. However, until these data are analyzed, the Agency agrees with those commenters who contended that the Skelly and Loy study does not provide sufficient information to establish a settleable solids limitation.

(11) One commenter suggested that an operator be given credit for demonstrating a good faith attempt to control sediment rather than be required to achieve a specific effluent limitation. The Agency rejects this suggestion as vague and unenforceable.

Comments on Skelly and Loy and D'Appolonia Studies

(1) Several commenters urged that any storm exemption must account for consecutive storm events, none of which equals a 10-year 24-hour storm, but which collectively cause an overflow from a sediment pond. However, as one commenter pointed out, the D'Appolonia study demonstrates that the probability of such multiple storm occurrences is extremely remote. Moreover, although several industry comments endorse other conclusions of the D'Appolonia study (specifically, the conclusions concerning the costs of building a pond to contain such multiple storm events, the increased pond size that would be needed, and the inability of any pond to assure attainment of the effluent limitations in these multiple storm scenarios), no commenter disputed D'Appolonia's conclusions or methodology concerning the probabilities of these multiple storm scenarios. In fact, while one commenter submitted a study purporting to demonstrate that the runoff from several lesser storm events can exceed the runoff from the 10-year 24-hour storm event, this study did not address the *likelihood* of these successive storm events occurring within a time period short enough to cause an overflow of a sediment pond.

(2) One commenter questioned the Agency's use of a computer modeling technique rather than empirical data to justify a storm exemption. The Agency agrees that empirical data would be preferable. As noted above, EPA is now in the process of collecting influent and effluent data during storm events at coal mine sites throughout the country. However, until such data are collected and analyzed, the Agency believes that the computer model utilized in the Skelly and Loy study corroborates industry's contention that relief during precipitation events is appropriate. As the Skelly and Loy report and several comments indicate, the assumptions used in the model, on balance, yield unrealistically low TSS effluent concentrations for the sites studied. In this regard, no commenter argued that the effluent concentrations reported by Skelly and Loy are unrealistically high. No commenter criticized the DEPOSITS model itself or disputed that it is state-of-the-art. Therefore, until a more adequate empirical data base is collected, the Agency believes it is reasonable to rely on the Skelly and Loy study as an indicator of the need for a storm exemption provision.

(3) One commenter claimed that it was unable to provide substantive comments on the Skelly and Loy and D'Appolonia reports in the absence of a specific proposed regulation. This comment is difficult to accept, since numerous other commenters did submit helpful and substantive comments on these reports.

(4) Several commenters stated that the Skelly and Loy report used assumptions which led to unrealistically ideal or optimal sediment pond performance. One commenter, on the other hand, claimed that this study underestimated pond performance by focusing solely on pond size, whereas other measures are available and may be crucial to control sediment and erosion (e.g., the use of jute matting, mulch, rip rap, check dams, energy dissipators, and other management practices).

On balance, the Agency believes that the assumptions used by Skelly and Loy optimize sediment removal at the sites examined. Most importantly, the model assumed "plug flow" and no "dead storage," which essentially means that the ponds exhibited *no* short circuiting and perfect displacement of water. These conditions generally cannot be achieved in the real world and, therefore, the model overstates sediment pond efficiency.

With respect to the other practices which are available to control sediment and erosion, it is extremely difficult to translate these measures into specific improvements in effluent quality. For example, it is virtually impossible to predict, on an industry-wide basis, how much improvement in effluent quality will result from using "X" bales of hay upstream of a sediment pond. More fundamentally, while these practices may reduce the concentration of the larger suspended solids before mine drainage enters the pond, they will do little to reduce the volume or concentration of finer, colloidal solids. As industry has claimed, and the Skelly and Loy study confirms, fine particles are the primary factor which prevents even an optimally designed and operated pond from meeting the effluent limitations during precipitation events. In addition, the ideal conditions discussed in the preceding paragraph effectively incorporate many of these management practices.

(5) Several commenters challenged the use of the Modified Universal Soil Loss Equation (MUSLE) for computing sediment delivery. One commenter suggested that the MUSLE is not state-of-the-art, and recommended instead the use of a model which is now being

developed at Purdue University. MUSLE is a more widely accepted model, and is derived from a larger data base than any other model presently in use. In addition, its use requires less site-specific information for many parameters in the equation; thus, use of other models would require even more assumptions concerning various "representative" factors which would necessarily be arbitrary. In short, there is no reason to believe that the use of the Purdue (or any other) method would appreciably change the results of the study; particularly, there is no reason to believe that other methodologies would alter the conclusion that the ponds studied cannot achieve the effluent limitations during precipitation events.

One commenter suggested that MUSLE is not appropriate for estimating sediment loadings for downstream pond locations, and that the use of "delivery ratio techniques" *might* be more suitable. This commenter also challenged the use of a composite curve number ("CN") in the MUSLE, and recommended use of a distributed parameter approach which would account for discrete areas of the drainage area. Although this commenter submitted revised calculations using a distributed parameter approach, he did not explain the technique which he used. Therefore, there is no basis for the Agency to conclude that this commenter's method is preferable. In short, there is no basis for the Agency to doubt that use of MUSLE was as reasonable as, and probably preferable to, any other approach. Even if this commenter's suggestions were adopted, moreover, they would only have served to *increase* TSS concentrations in the effluent, and therefore would not change the report's central conclusion.

(6) Several commenters argued that there is no basis for the Skelly and Loy recommendation that a sediment pond be designed according to OSM's design criteria, since the study shows that those design criteria will not ensure attainment of the effluent limitations during precipitation events. The Skelly and Loy study took OSM's design requirements as given. This approach was entirely appropriate. In addition, OSM's regulations permit reduction of pond size if other measures are taken.

(7) Several commenters challenged the cost estimates contained in the Skelly and Loy report as unrealistically low. One commenter submitted site-specific cost estimates which were higher than Skelly and Loy's. Cost estimates are necessarily imprecise, and the Agency is unable to conclude that Skelly and Loy's cost estimates are necessarily unreasonable, or that other cost assumptions are more reasonable. In any event, these comments are moot in light of the regulation promulgated today.

(8) Several commenters criticized the Skelly and Loy report's failure to address the necessity or desirability, from the standpoint of water quality, of achieving an effluent concentration of 35 and 70 mg/l. The Agency is required to establish technology based limitations without regard to water quality considerations.

(9) One commenter challenged the report's assumptions concerning particle size distributions. As the Skelly and Loy report indicates, particle size distributions are inherently site-specific. The Agency is satisfied that Skelly and Loy utilized reasonable assumptions in this regard, and the commenters have not pointed to any data or literature which demonstrate otherwise.

(10) One commenter claimed that Skelly and Loy failed to take into account whether the designed sediment ponds could physically be constructed at the locations modeled. This is incorrect. Skelly and Loy located all ponds based upon their site-specific knowledge of the mine sites examined.

[FR Doc. 79-39032 Filed 12-27-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 436

[1380-8]

Mineral Mining and Processing Point Source Category; Revocation of BPT Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final amendments to rules.

SUMMARY: EPA has published "best practicable technology" (BPT) regulations under the Clean Water Act for several subcategories of the mineral mining industry (40 CFR Part 436). In *National Crushed Stone Association* v. *EPA*, 601 F.2d 111 (4th Cir. 1979), the U.S. Court of Appeals for the Fourth Circuit invalidated certain portions of the BPT regulations for the (1) crushed stone and (2) construction sand and gravel subcategories. 601 F.2d at 125. EPA is accordingly revoking the invalidated portions below.

DATES: The revocations are effective as of June 18, 1979. (This date corresponds to the Court decision requiring today's revocations.)

FOR FURTHER INFORMATION CONTACT: Barry S. Neuman (A-131), Office of General Counsel, 401 M Street SW., Washington, D.C. 20460, (202) 755-0753.

Dated: December 21, 1979.

Douglas M. Costle,
Administrator.

§§ 436.22 and 436.32 [Amended]

1. 40 CFR § 436.22(a)(1) is amended by deleting the following from the table therein:

TSS	45 mg/l	25 mg/l

2. 40 CFR § 436.22(a)(2) is revoked.

3. 40 CFR § 436.22(a)(3) is redesignated as 40 CFR § 436.22(a)(2) and is amended by deleting the following from the table therein:

TSS	45 mg/l	25 mg/l

4. 40 CFR § 436.32(a)(1) is amended by deleting the following from the table therein:

TSS	45 mg/l	25 mg/l

5. 40 CFR § 436.32(a)(2) is revoked.

6. 40 CFR § 436.32(a)(3) is redesignated as 40 CFR § 436.32(a)(2) and is amended by deleting the following from the table therein:

TSS	45 mg/l	25 mg/l

[FR Doc. 79-39033 Filed 12-27-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5759]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or

Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Alabama	Escambia	East Brewton, City of	010073-B	Dec. 4, 1979, Suspension withdrawn.	Nov. 23, 1973.
Do	Marion	Unincorporated Areas	010161-A	do	Oct. 18, 1974, and Mar. 17, 1978.
Do	Tuscaloosa	Northport, City of	010202-B	do	Dec. 28, 1973, and July 9, 1976.
Arizona	Maricopa	Gila Bend, Town of	040043-B	do	Jan. 23, 1974, and Dec. 24, 1976.
Do	Pima	Oro Valley, Town of	040109-B	do	Apr. 11, 1975, and July 16, 1976.
Do	Maricopa	Phoenix, City of	040051-B	do	June 28, 1974, and Sept. 12, 1975.
Arkansas	St. Francis	Forrest City, City of	050187-B	do	Mar. 15, 1974, and Dec. 26, 1976.
California	Orange	Villa Park, City of	060236-B	do	Mar. 22, 1974, and Oct. 31, 1975.
Connecticut	New Haven	Oxford, Town of	090150-B	do	June 28, 1974, and Dec. 17, 1976.
Do	Fairfield	Trumbull, Town of	090017-B	do	June 28, 1974, and Apr. 1, 1977.
Florida	Seminole	Oviedo, City of	120293-B	do	Jan. 23, 1974, and Feb. 13, 1976.
Georgia	Whitfield	Dalton, City of	130194-B	do	Aug. 16, 1974, and Aug. 20, 1976.
Illinois	Tazewell	East Peoria, City of	170649-B	do	June 21, 1974.
Do	Cook	Indian Head Park, Village of	170110-B	do	Apr. 5, 1975, and Oct. 10, 1975.
Do	La Salle	Mendota, City of	170403-B	do	Apr. 5, 1974, and Apr. 2, 1976.
Do	Livingston	Pontiac, City of	170426-B	do	Mar. 8, 1974, and July 18, 1975.
Do	Cook and Will	Tinley, Village of	170169-B	do	May 17, 1974, and Jan. 13, 1978.
Indiana	Madison	Anderson, City of	180150-B	do	Feb. 15, 1974, and Jan. 30, 1976.
Do	Lake	Hobart, City of	180136-B	do	Apr. 12, 1974, and June 18, 1976.
Do	Morgan	Martinsville, City of	180177-B	do	Nov. 23, 1973.
Do	Switzerland	Patriot, Town of	180309-A	do	July 8, 1977.
Do	do	Vevay, Town of	180352-B	do	Feb. 1, 1975.
Kansas	Marion	Marion, City of	200207-B	do	Feb. 1, 1974, and Oct. 31, 1975.
Louisiana	East Feliciana	Clinton, Town of	220249-A	do	July 18, 1975.
Maine	Piscataquis	Milo, Town of	230177-B	do	Jan. 10, 1975, and Jan. 20, 1977.
Do	Oxford	Porter, Town of	230338-A	do	Feb. 7, 1975.
Michigan	Berrien	New Buffalo, City of	260038-B	do	May 31, 1974, and June 11, 1976.
Minnesota	Anoka	Centerville, City of	270008-B	do	May 3, 1974, and Jan. 3, 1975.
Do	Hennepin	Shorewood, City of	270185-B	do	May 31, 1974, and Mar. 19, 1976.
Missouri	New Madrid	Portageville, City of	290259-B	do	Jan. 9, 1974, and Dec. 12, 1975.
Nebraska	Douglas	Bennington, Village of	310074-A	do	Feb. 1, 1974.
Do	Johnson	Tecumseh, City of	310127-B	do	Dec. 4, 1979.
Do	Dodge	Winslow, Village of	310410-A	do	Aug. 23, 1974.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
New Jersey	Essex	Irvington, Town of	340184-B	do	Dec. 28, 1973, and Sept. 26, 1975.
Do	Middlesex	Metuchen, Borough of	340268-A	do	Nov. 5, 1976.
Do	do	New Brunswick, City of	340270-B	do	June 15, 1973, and Mar. 19, 1976.
Do	do	South Amboy, City of	340277-B	do	Feb. 1, 1974, and Dec. 12, 1975.
Do	Somerset	Watchung, Borough of	340447-B	do	Feb. 1, 1974, and June 4, 1976.
New York	Westchester	Bedford, Town of	360903-C	do	May 31, 1974, and July 9, 1976.
Do	Albany	Cohoes, City of	360006-B	do	Oct. 5, 1973, and June 11, 1976.
Do	Livingston	North Dansville, Town of	360388-B	do	Dec. 28, 1973, and Apr. 23, 1976.
Do	Saratoga	Waterford, Town of	360734-B	do	Mar. 29, 1974.
North Dakota	Cass	Hunter, City of	330181-A	do	Feb. 21, 1975.
Ohio	Lake	Madison, Village of	390316-B	do	May 10, 1974.
Do	do	Willowick, City of	390324-B	do	Aug. 15, 1975.
Oklahoma	Muskogee	Haskell, Town of	400124-B	do	Apr. 12, 1974, and Apr. 23, 1976.
Pennsylvania	Lebanon	Jonestown, Borough of	420572-B	do	Mar. 30, 1973, and Nov. 12, 1976.
Do	do	Lebanon, City of	420573-A	do	Nov. 23, 1973.
Do	Cumberland	Lemoyne, Borough of	420361-B	do	Jan. 14, 1977.
Do	Bucks	Middletown, Township of	420193-B	do	May 31, 1974, and Oct. 17, 1975.
Do	Schuylkill	Pine Grove, Borough of	420782-B	do	Aug. 2, 1974, and May 28, 1976.
Do	Northampton	Tatamy, Borough of	420731-B	do	Apr. 12, 1974, and June 25, 1976.
Do	Lebanon	Union, Township of	421806-A	do	Dec. 13, 1974.
Tennessee	Sullivan	Kingsport, City of	470184-B	do	Mar. 8, 1974, and Aug.13, 1976.
Texas	Collins and Dallas	Richardson, City of	480184-B	do	May 24, 1974, and May 17, 1977.
Vermont	Windsor	Springfield, Town of	500154-B	do	Feb. 22, 1974, and Sept 12, 1975.
Washington	Cowlitz	Kelso, City of	530033-B	do	Feb. 15, 1974, and June 4, 1976.
Do	Lewis	Morton, City of	530105-B	do	May 31, 1974, and Feb. 6, 1976.
West Virginia	Jefferson	Charles Town, Town of	540068-B	do	Feb. 1, 1974, and Sept. 19, 1975.
Mississippi	Wayne	Unincorporated Areas	280233	Dec. 3, 1979, emergency	Dec. 20, 1974, and Jan. 13, 1978.
Pennsylvania	Warren	Eldred, Township of	422546	do	Jan. 17, 1975.
Do	Bradford	Pike, Township of	421403-A	do	Nov. 1, 1974 and Aug. 20, 1976.
Do	Clearfield	do	421190-A	do	Sept. 6, 1974 and Sept. 10, 1976.
New York	Cattaraugus	Salamanca, Town of	360038-A	do. Dec. 3, 1979, regular	June 3, 1977.
Pennsylvania	Schuylkill	New Castle, Township of	422012	Dec. 3, 1979, emergency	Dec. 27, 1974.
California	Stanislaus	Oakdale, City of	060383-B	Apr. 1, 1975, emergency Sept. 5, 1979, regular Sept. 28, 1979, suspended Dec. 4, 1979, reinstated.	June 7, 1974 and Dec. 12, 1975.
Montana	Cascade	Belt, City of	300009-A	May 13, 1975, emergency Feb. 23, 1979, regular Feb. 23, 1979, withdrawal Dec. 5, 1979, reinstated.	Mar. 15, 1974 and Sept. 19, 1975.
Michigan	Genesee	Flushing, Township of	260336	Dec. 6, 1979, emergency	Dec. 10, 1976.
Mississippi	Perry	Richton, Town of	280321	do	Nov. 17, 1978.
Nebraska	Dixon	Wakefield, City of	310404	Dec. 5, 1979, emergency	Aug. 29, 1975.
New York	Green	Halcott, Town of	360291	Dec. 11, 1979, emergency.	Feb. 14, 1975.
North Carolina	Stokes	Unincorporated Areas	370362	do	Mar. 17, 1978.

(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); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: December 14, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-39549 Filed 12-27-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5754]

Communities With Minimal Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the forseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Area.

Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with Minimal Flood Hazard Area.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh St. SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood Insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

§ 65.7 List of communities with minimal flood hazard areas.

State	County	Community name	Date of conversion to regular program
Louisiana	Richland Parish	Town of Delhi	Jan. 8, 1980.
Arkansas	Mississippi	City of Osceola	Jan. 15, 1980.
Oregon	Union	City of Summerville	Jan. 15, 1980.
Washington	Island	City of Oak Harbor	Jan. 15, 1980.
Illinois	Moultrie	Village of Bethany	Jan. 18, 1980.
Illinois	St. Clair	Village of Freeburg	Jan. 18, 1980.
Michigan	Berrien	City of Coloma	Jan. 18, 1980.
Ohio	Pickaway and Fayette	Village of New Holland	Jan. 18, 1980.
West Virginia	Fayette	City of Oak Hill	Jan. 18, 1980.
Nevada	Nye	City of Gabbs	Jan. 22, 1980.
South Dakota	Moody	Town of Egan	Jan. 22, 1980.
South Dakota	Hamlin	City of Estelline	Jan. 22, 1980.
Florida	Bay	Town of Cedar Grove	Jan. 25, 1980.
Missouri	Dunklin	City of Clarkton	Jan. 29, 1980.
Oregon	Curry	City of Port Orford	Jan. 29, 1980.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: December 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–39551 Filed 12–27–79; 8:45 am]

BILLING CODE 6718–01–M

44 CFR Part 65

[Docket No. FEMA 5755]

Communities With No Special Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by the 100-year flood. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh St., SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as zone C. In a zone C, insurance coverage is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate for a one-story 1–4 family dwelling is $.25 per $100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is $.01 per $100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium rate is $.05 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of $185,000 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

The entry reads as follows:

§ 65.8 List of communities with no special flood hazard areas.

State	County	Community name	Date of conversion to regular program
California	Los Angeles	City of Bell	Nov. 30, 1979.
California	Los Angeles	City of Monterey Park	Nov. 30, 1979.
California	Los Angeles	City of Rolling Hill Estates	Nov. 30, 1979.
Illinois	DeKalb	Town of Cortland	Nov. 30, 1979.
Iowa	Clay	City of Everly	Nov. 30, 1979.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: December 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-39552 Filed 12-27-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5756]

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–5581 or Toll Free Line (800) 424–8872.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations of the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection. Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4 (Presently appearing at its former Section 24 CFR Part 1915).

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by 60.3 (presently appearing at its former § 1910.3) of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4. (Presently appearing at its former Section 24 CFR Part 1915.4):

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community number
Illinois	Cook	Village of Arlington Heights	*The Arlington Heights Herald*, Nov. 8 and Nov. 9, 1979.	Mr. L. A. Hanson, Village Manager, Village of Arlington Heights, 33 South Arlington Heights Road, Arlington Heights, Illinois 60005.	Oct. 29, 1979, 19168.	170056
Louisiana	East Baton Rouge Parish.	City of Baker	*The Baker Observer*, Oct. 11, and Oct. 18, 1979.	Honorable M. A. Cross, Mayor, City of Baker, Post Office Box 707, Baker, Louisiana 70714.	Oct. 18, 1979	225193C
Massachusetts	Hampden	Town of West Springfield	*West Springfield Record*, Oct. 4, and Oct. 11, 1979.	Dr. Frederick Conlin, Chairman, Board of Selectmen, Municipal Office Building, 26 Central Street, West Springfield, Massachusetts 01089.	Oct. 11, 1979	250155C

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community number
New Jersey	Bergen	Borough of Bergenfield	*The Post*, Oct. 3, and Oct. 10, 1979	Honorable James F. Lodato, Mayor, Borough of Bergenfield, 198 North Washington Avenue, Bergenfield, New Jersey 07621.	Oct. 10, 1979	340020B
Pennsylvania	Carbon	Borough of Lehighton	*Times-News*, Oct. 29, and Nov. 2, 1979.	Honorable Wilbur A. Bauchspies, Mayor, Borough of Lehighton, Municipal Building, Lehighton, Pennsylvania 18235.	Oct. 16, 1979, 1916B	420251B
Rhode Island	Bristol	Town of Barrington	*Barrington Times*, Sept. 26, and Oct. 3, 1979.	Mr. Robert J. Schiedler, Town Manager, Town Hall, Barrington, Rhode Island 02806.	Sept. 19, 1979	445392 0005C
Iowa	Scott	City of Riverdale	*Quad-City Times*, Nov. 12, and Nov. 13, 1979.	Honorable Ralph I. Brooks, Mayor, City of Riverdale, 209 Manor Drive, Riverdale, Iowa 52722.	Nov. 13, 1979	190245C

(National Flood Insurance Act of 1968 (Title XIII of Housing Urban Development Act 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: December 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-39553 Filed 12-27-79; 8:45 am]

BILLING CODE 6718-03-M

COMMISSION ON CIVIL RIGHTS

45 CFR Parts 701 and 702

Statement of Organization and Functions of the Commission

AGENCY: United States Commission on Civil Rights.

ACTION: Final rule; corrections.

SUMMARY: In the Federal Register of Wednesday, December 19, 1979, FR Doc. 79–3886 beginning at page 75147, a Final Rule stating the Organization and Functions of the Commission was published containing two typographical errors. This publication is to correct these errors. No substantive change in the Rule is made by this publication.

EFFECTIVE DATE: December 28, 1979.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Glick, Solicitor, U.S. Commission on Civil Rights Washington, D.C. 20425, (202) 254–5633.

SUPPLEMENTARY INFORMATION: It is appropriate to correct errors in the numbering of sections of the Commission's Statement of Organization and Functions so that no confusion respecting these numbers will arise in the future.

1. In Item 1 of the previous publication the heading of the Section published as: Section 702.2 Responsibilities is corrected to read: "Section 701.1 Responsibilities".

2. Item 7 on page 75150 in column 2 of the previous publication is corrected to read: "Section 702.8 (b) and (c) are revised to read as follows:"

Dated: December 21, 1979.

Lawrence B. Glick,

Solicitor.

[FR. Doc. 79-39684 Filed 12-27-79; 8:45 am]

BILLING CODE 6335-01-M

Proposed Rules

Federal Register
Vol. 44, No. 250
Friday, December 28, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force; Retention Preference

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: This regulation, to be issued under the Civil Service Reform Act of 1978, would provide that an employee who is serving a probationary period upon initial appointment to a supervisory or managerial position is in tenure group I unless the employee is serving an initial probationary period on competitive appointment.

DATE: Comment Date: Written comments will be considered if received no later than February 26, 1980.

ADDRESS: Send or deliver written comments to Arch S. Ramsay, Associate Director, Staffing Services, Office of Personnel Management, 1900 E Street, NW., Room 6526, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ted Dow or Tom Glennon, 202–632–4422.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management proposes to make the following specific changes in § 351.501 of Part 351:

(1) Paragraph (b) is revised to provide that a supervisory or managerial employee serving a probationary period required by section 303 of the Civil Service Reform Act, as implemented in Subpart 315–I of OPM's regulations (5 CFR 315–I), is in tenure group I if the employee is otherwise eligible to be included in this group. In addition, a provision is deleted which assigned a career employee in an obligated position to tenure group I when the employee was competing for a position at and below the grade in which he/she last served on a permanent basis. This material became obsolete with the repeal of the Whitten Amendment and the removal of its requirement for obligated positions.

(2) Paragraph (c) is revised to provide that a supervisory or managerial employee serving a probationary period required by Subpart 315–I is in tenure group II if the employee is serving a probationary period under Subpart 315–H. In addition, a provision which assigned other career employees in obligated positions to tenure group II is deleted because of, again, the repeal of the Whitten Amendment.

Office of Personnel Management.

Beverly M. Jones

Issuance System Manager.

Accordingly, OPM proposes to revise 5 CFR § 351.501 to read as follows:

§ 351.501 Tenure groups and subgroups—competitive service.

(a) Each agency shall classify the competing employees on a retention register who occupy positions in the competitive service in the following groups and subgroups on the basis of tenure of employment and veteran preference. The descending order of retention standing:

(1) By groups is group I, group II, group III;

(2) Within each group is subgroup AD, subgroup A, subgroup B;

(3) Within each subgroup persons are ranked beginning with the earliest service date.

(b) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart 315–I of this title is in group I if the employee is otherwise eligible to be included in this group.)

(c) Group II includes:

(1) Each employee serving a probationary period under Subpart 315–H of this title. (A supervisory or managerial employee serving a probationary period required by Subpart 315–I of this title is in group II if that employee has not completed a probationary period under Subpart 315–H of this title.); and

(2) Each career-conditional employee.

(d) Group III includes:

(1) Each indefinite employee;

(2) Each employee serving under a temporary appointment pending establishment of register;

(3) Each employee in status quo; and

(4) Each employee serving under other nonstatus nontemporary appointment.

(e) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(f) Subgroup A includes each preference eligible employee not included in subgroup AD.

(g) Subgroup B includes each nonpreference eligible employee.

(5 U.S.C. 1302, 3502)

[FR Doc. 79-39543 Filed 12-27-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 733

Political Participation by U.S. Government Employees in Local Elections in the City of Manassas Park, Va.

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: At the request of the Mayor of the City of Manassas Park, the Office of Personnel Management (OPM) proposes to amend its regulations to grant Federal Government employees residing in the City of Manassas Park, Virginia, a partial exemption from the political activity restrictions of the Hatch Act.

DATE: Written comments will be considered if received on or before February 26, 1980.

ADDRESS: Submit written comments to Office of the General Counsel, United States Office of Personnel Management, Room 5H30, 1900 E Street, N.W., Washington, D.C. 20415. All comments received on this proposed rule will be available for public inspection at the above address on business days between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert H. Moll, (202) 632–7600.

SUPPLEMENTARY INFORMATION: The Hatch Act at 5 U.S.C. 7324 *et.seq.*, controls the political activity of Federal employees and individuals employed by the District of Columbia. 5 U.S.C. 7324 general prohibits Government employees from taking an active part in political campaigns. 5 U.S.C. 7327, however, authorizes OPM to prescribe regulations permitting certain Government employees to be politically active to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7327, OPM can allow Government employees to participate in political campaigns involving the municipality where they reside when two conditions relevant to the current request for exemption exist. One condition is met if the municipality is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that the domestic interest of employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.124(b) OPM has designated municipalities and political subdivisions in which Government employees may participate in local elections. At 5 CFR 733.124(c) OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for and service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

In response to a request from the Mayor of the City of Manassas Park, OPM proposes to designate that municipality as one where Government employees may participate in local elections subject to the limitations established by OPM. This proposal reflects OPM's determination that it is in the domestic interest of Government employees residing in the City of Manassas Park to permit their local political participation in connection with independent candidacies. This determination is based on evidence developed during an OPM investigation of the eligibility of the City of Manassas Park for a partial exemption from political activity restrictions.

The OPM investigation included interviews of City officials, consultation with officials of local political organizations, and a review of certain documentary material. Principal factors leading to OPM's determination are the proximity of the City of Manassas Park to the District of Columbia, the substantial proportion of City residents who are Federal Government employees, the history of vigorous nonpartisan elections in the municipality, and the development of partisan political parties in the City.

A copy of this notice will be published in local newspapers serving the City of Manassas Park.

If this proposed rule is adopted, OPM will amend 5 CFR § 733.124(b) by adding the City of Manassas Park to the list of designated Virginia municipalities and political subdivisions in which Federal Government employees may participate in local elections, to be listed after Loudoun County and before Portsmouth.

Office of Personnel Management.

Roderick S. Speer,

Assistant Issuance System Manager.

December 21, 1979.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

Securities of Insured Nonmember State Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This proposal will amend the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under the Securities Exchange Act of 1934 (15 U.S.C. 78*a. et seq.*) ("Act") in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Act requires that the FDIC issue substantially similar regulations to those of the SEC or publish its reasons for not doing so. Also, this proposal is an attempt to simplify the regulation and make it more understandable by bringing Part 335 into conformity with changes in Reports of Condition and Reports of Income prescribed for insured banks.

DATES: Comments must be received by February 26, 1980.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulations to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All written comments will be made available for public inspection in Room 6108 at this address between 8:30 A.M. and 5:00 P.M. during work days.

FOR FURTHER INFORMATION CONTACT: Mulford H. Smith or David J. Seermon, Financial Analysts, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. (202) 389-4651.

SUPPLEMENTARY INFORMATION: The proposal covers the following:

1. Recent amendments to Article 9 of the SEC's Regulation S-X which governs the form and content of financial statements of bank holding companies and banks;
2. Incorporation by reference of the Instructions for the Preparation of Reports of Condition and Reports of Income;
3. Modification of certain financial statement schedules;
4. Falsification of accounting records;
5. Bank's representations in connection with the preparation of required reports and documents;
6. Restructuring of accounting and financial statement regulations.
7. Designation of sample financial statements as "Formats" rather then "Forms."

FDIC classifies the proposed changes as significant in that they would have a substanital impact on those banks subject to the reporting requirements of Section 12(i) of the Act. FDIC believes the proposal would not have any significant impact on the competitive status of banks subject to Section 12(i) of the Act. In view of this fact and because the changes are mandated by law, FDIC has concluded that a cost-benefit analysis of the changes is not necessary. Comments are specifically requested on costs and competition, however.

The FDIC would make the following changes in its existing regulation:

A. Amendments To Conform with Regulation S-X

On September 7, 1978 the SEC amended Article 9 of Regulation S-X. The following changes would conform Part 335 to certain of the SEC changes:

1. *Cash and due from depository institutions.* Format F-9A would be changed to add a requirement that interest bearing and noninterest bearing deposit balances be stated separately.

2. *Significant investments.* Format F-9A would be changed to add a requirement that bank investments in the securities of an issuer other than U.S. Treasury and Agency securities for which the aggregate book value exceed 10% of the equity capital accounts of the bank must be separately disclosed in a note to the balance sheet. The format also would state that consideration shall be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics, of different issues of securities of an issuer, where appropriate.

3. *Loans.* Format F-9A would be changed to add a note requirement for disclosure of the aggregate amount of loans outstanding to officers, directors,

principal shareholders and associates if these total balances exceed 5% of equity capital.

4. *Deposits.* Format F-9A would be changed to include a note requirement for disclosure of the aggregate time certificates of deposit and other time deposits in domestic offices which are $100,000 or more.

5. *Indebtedness of bank.*

(a) Financial statement note requirements related to federal funds purchased, securities sold under agreements to repurchase, and other liabilities for borrowed money would be expanded by amending Format F-9A. Disclosures would include the weighted-average interest rate at the balance sheet date(s), the maximum month-end borrowing during each accounting period reported, average borrowings during the period, and the weighted-average interest rate for such average borrowings.

(b) For mortgage, capitalized lease, and subordinated note indebtedness expanded Format F-9A caption instructions would require a table showing on a yearly basis for the next five years after the balance sheet date the combined aggregate amounts of maturities and sinking fund requirements.

6. *Income Statement Format.* As a result of recent amendments to Article 9, Regulation S-X now sets forth an income statement format different from the banking agency format for the reports of income (8040/02, 01A and 02A) of insured banks. The basic difference is that the SEC now requires a net interest margin format for reports of income filed with them. The FDIC does not propose to adopt this requirement because of the substantial difference from the report of income required of insured banks generally and its view that the SEC required format would be unfamiliar to most banks and perhaps their investors. However, the general instructions to Format F-9 would be amended to state that the formats for financial statements are to serve as guides and are recommended presentations. Furthermore, the instructions would state that financial statements could be filed in such form and order as would, in the bank's opinion, best indicate their significance and character. Thus, a bank might at its option provide net interest margin income statements such as would conform with requirements of Regulation S-X if all material information required by Format F-9B is presented.

7. *Foreign Activities.* Section 335.7(e)(9) would be added to require disclosure of foreign activities of an insured nonmember bank where assets, operating income, income (loss) before taxes and securities gain (losses), or net income (loss) associated with foreign activities, comprise over 10% of the corresponding amount in the related financial statement. Loan categories, cash and due from balances in banks in foreign countries, deposit liabilities, other borrowings, an income and expense summary, and an allowance for possible loan losses must be separately stated. In addition, activities for each significant geographic area (defined to include an area in which assets, operating income, or net income exceed ten percent of the comparable amount in a related financial statement), must be separately given for that area. Other foreign activities may be aggregated and reported as a separate total with respect to the total assets, total operating income, income before taxes and securities gains and net income if those other areas are not significant geographic areas. Also, Format F-9A would be changed to provide for the separate disclosure of deposits in foreign offices.

8. *Preferred Stock.* The SEC issued Accounting Series Release No. 268 "Redeemable Preferred Stock" on July 27, 1979. This release deals with the financial statement classification of an note disclosure requirements for preferred stock subject to mandatory redemption requirements or whose redemption is outside the control of the issuer. Various portions of Article 9 were amended by this release. The FDIC is not currently proposing to adopt these amendments because bank's subject to its regulation generally don't issue this type of security and there are restrictions imposed and prior approvals required by the FDIC for retirement of bank capital.

B. Simplification of the Financial Statement Regulations

In order to ease banks' transition from the report of condition and report of income filed pursuant to bank regulatory requirements to the requirements of the Act, the instructions and formats provided by Form 8040/02 and 8040/12, or other appropriate forms, are incorporated by reference. Necessary revisions or expansions of the instructions or in some cases the formats are provided as a supplement to the standard forms. Thus, banks will be able to use their relevant 8040 presentations by simply modifying them to the extent required under Part 335.

Existing Schedule II—Other Securities would be eliminated and added to the requirements of existing Schedule I. Also, the par value column of Schedule I would be omitted. Schedule VI—Other Liabilities for Borrowed Money and Schedule IX—Supplementary Income Statement Information would be deleted.

Existing Schedule VIII—Amounts Receivable From Directors, Officers, Employees, And Principal Holders (Other Than Affiliates) of Equity Securities of The Bank And Its Affiliates would be redesignated as Schedule II—Loans to Officers, Directors, Principal Security Holders, and Any Associates of the Foregoing Persons. There would be some minor column caption word changes also. The SEC has recently proposed amendments to its Schedule I of Rule 9-05, the counterpart to FDIC's Schedule VIII, to reduce the reporting detail of this schedule. Loans to individuals for household, family and personal expenditures would be excluded if these loans were made in the ordinary course of business. Ordinary course of business loans to directors (and any of their associates) who are not officers of the bank nor principal security holders may be stated in aggregate. The FDIC proposes to adopt these changes.

C. Falsification of Accounting Records and Issuer's Representations

Section 13(b)(2) of the Act requires issuers who are registered under the Act to (1) make and keep books, records and accounts, in reasonable detail, which accurately and fairly reflect transactions and dispositions of the assets of the Banks' and (2) device and maintain a system of internal accounting controls sufficient to meet certain standards. The SEC has adopted rules 13(b)2-1, and 13(b)2-2 in order to implement this authority. 44 FR 10970 (February 23, 1979). The FDIC would adopt the SEC amendments by amending Section 335.7(c)&(d) to add these new provisions.

D. Deletions and Relocations of Existing Regulations

1. *Deletions.* The following sections in existing Part 335 would be deleted:

(a) Section 335.7(a) Application.

(b) Section 335.7(d)(2)(iii) Examination of financial statements of persons other than the bank.

(c) Section 335.7(e)(5) Omission of substantially identical notes.

(d) Section 335.7(e)(6) Omission of names of certain subsidiaries.

(e) Section 335.7(e)(15)(ii) Bases of revenue recognition.

(f) Section 335.7(e)(15)(vi)(4) Lease Assets and Lease Commitments.

(g) Sections 335.7(f) (4), (5), (6), (11), (12) Consolidated Financial Statements.

2. *Regulations that would be relocated.*

(a) Section 335.7(b) would be moved to § 335.71 General Instruction No. 1.

(b) Section 335.7(c) would be moved to § 335.7(a).

(c) Section 335.7(d)(3)(ii)(A) would be moved to § 335.7(b)(1)(i).

(d) Section 335.7(e)(2) would be moved to § 335.71 General Instruction No. 3.

(e) Section 335.7(e)(14)(iii) would be moved to § 335.71(A), Item 26.

(f) Section 335.7(e)(14)(x) would be moved to § 335.7(e)(13)(iii).

(g) Section 335.7(e)(15)(v) would be moved to § 335.7(e)(12)(x).

(h) Section 335.7(e)(15)(vi) would be moved to § 335.7(e)(11).

3. The section numbering and lettering sequences throughout Part 335 would be adjusted to reflect the above changes.

E. Competition and Costs

The FDIC requests comments concerning the impact these amendments may have upon competition. It also requests comments upon any increase in cost or additional burdens the amendments may pose, which would not be outweighed by the benefits provided the bank, its shareholders and the public. The FDIC is specifically requesting information from banks concerning projected startup costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

By Order of the Board of Directors, December 20, 1979

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

It is proposed to amend 12 CFR Part 335 as follows:

1. Section 335.7 is revised as follows:

§ 335.7 Form and content of financial statements.

(a) *Principles of financial reporting.* Financial statements filed with the Corporation pursuant to this part shall be prepared in accordance with generally accepted accounting principles and practices applicable to banks. The Corporation may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

(b) *Verification.*—(1) *General.*

(i) Every verification with respect to financial statements filed pursuant to this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the verification.

(ii) If the person or persons making a verification considers that he must take exceptions or express qualifications with respect thereto, each such exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(2) *Opinions to be expressed by principal accounting officer and internal auditor.* Every verification by a bank's principal accounting officer and internal auditor shall state:

(i) The opinions of such persons with respect to the financial statements covered by the verification and the accounting principles and practices reflected therein; and

(ii) The opinions of such persons as to any material changes in accounting principles or practices or in the method of applying the accounting principles or practices, or adjustments of the accounts, required to be set forth by paragraph (e)(5) of this section.

(3) *Examination by independent public accountants.*

(i) *Qualifications of independent public accountants.*

(A) The Corporation will not recognize any person as an independent public accountant who is not registered or licensed to practice as a public accountant by a regulatory authority of a State and in good standing with such authority as such an accountant.

(B) The Corporation will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considerd not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates *(1)* in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he or his firm or a member thereof had, or was committed to acquire, an direct financial interest or any material indirect financial interest, or *(2)* with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of section 335.7 the term "member" means all partners in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.

(C) In determining whether a public accountant is, in fact, independent with respect to a particular person, the Corporation will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Corporation.

(ii) *Representations as to the audit.* The independent public accountant's report—

(A) shall state whether the audit was made in accordance with generally accepted auditing standards; and

(B) shall designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission. Nothing in this provision shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(3)(iii) of this section.

(iii) *Opinions to be expressed.* The independent public accountant's report shall state clearly:

(A) The opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and

(B) The opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements required to be set forth by paragraph (e)(5) of this section.

(iv) *Exceptions.* If the accountant making the report considers that he must take exceptions or express qualifications with respect thereto, each such exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(v) *Association with unaudited note covering interim financial data.* If the financial statements covered by the

accountant's report designate as "unaudited" the note required by section 335.7(e)(13)(vii), it shall be presumed that appropriate professional standards and procedures with respect to the data in the note have been followed by the independent accountant who is associated with the unaudited footnote by virtue of reporting on the financial statements in which the note is included.

(vi) *Examination of financial statements by more than one independent public accountant.* If, with respect to the examination of the financial statements of any bank, the principal independent public accountant relies on an audit made by another independent public accountant of certain of the accounts of such bank or its subsidiaries, the report of such other accountant shall be filed (and the provisions of this subparagraph shall be applicable thereto); however, the report of such other accountant need not be filed (A) if no reference is made directly or indirectly to such other accountant's audit in the principal accountant's report, or (B) if, having referred to such other accountant's audit the principal accountant's report indicates an assumption of responsibility for such other accountant's audit.

(c) *Falsification of accounting records.* No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act.

(d) *Bank's representations in connection with the preparation of required reports and documents.* No director or officer of a bank shall directly or indirectly make or cause to be made a materially false or misleading statement, or omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statements of the bank required to be made pursuant to this part or (2) the preparation or filing of any document or report required to be filed with the Corporation pursuant to this part or otherwise.

(e) *Provisions of general application.* (1) *Requirements as to form.* Financial statements shall be prepared in accordance with the applicable requirements of Formats 9A, B, C, D, and E. All money amounts required to be shown in financial statements may be expressed in even dollars or thousands of dollars. If shown in even thousands, and indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column. The individual amounts shown need not be adjusted to the nearest dollar or thousand if the failure of the items to add to the totals shown is stated in a note as due to the dropping of amounts of less than $1.00 or $1,000, as appropriate.

(2) *Items not material.* If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth.

(3) *Inapplicable captions and omission of unrequired or inapplicable financial statements.* No caption need be shown in any financial statement required by the forms set forth in this part as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated in the list of financial statements required by the applicable form.

(4) *Additional information.* In addition to the information required with respect to any financial statement, such further information shall be furnished as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(5) *Changes in accounting principles and practices and retroactive adjustments of accounts.* Any change in accounting principle or practice, or in the method of applying any accounting principle or practice, made during any period for which financial statements are filed that affects comparability of such financial statements with those of prior or future periods and the effect thereof upon the net income for each period for which financial statements are filed, shall be disclosed in a note to the appropriate financial statement. Any material retroactive adjustment made during any period for which financial statements are filed, and the effect thereof upon net income of prior periods, shall be disclosed in a note to the appropriate financial statement.

(6) *Summary of accounting principles and practices.* Information required in notes as to accounting principles and practices reflected in the financial statements may be presented in the form of a single statement. In such a case specific references shall be made in the appropriate financial statements to the applicable portion of such single statement.

(7) *Reacquired evidences of indebtedness.* Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption.

(8) *Reacquired shares.* When authorized by statute, reacquired shares not retired shall be shown separately as a deduction from capital shares, or from the total of capital shares and other stockholders' equity, at either par of stated value, or cost, as circumstances require.

(9) *Foreign activities.* If assests, or operating income, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements.

(i) *Loans.* State separately loan categories as prescribed by Schedule A, Column C of Consolidated Report of Condition, FDIC 8040/13, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(ii) *Balances with banks in foreign countries.* State separately balances with foreign branches of other U.S. banks and with other banks in foreign countries. (See line 5 (a) and (b) of Schedule C, Column C of Consolidated Report of Condition, FDIC 8040/13.) Also furnish the amount of interest-bearing balances included above.

(iii) *Deposit liabilities.* Furnish deposit information as prescribed in Schedule F/F of Consolidated Report of Condition, FDIC 8040/13. State also amount of interest-bearing deposits in denominations of $100,000 or more.

(iv) *Other borrowings.* State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on the Balance Sheet (Format F-9A) Items 18, 20, 21 and 25.

(v) *Income and expense summary.* For each period for which an income statement is filed, furnish information as prescribed in Part 1, Column B and Part 2 of the Statement of Income FDIC 8040/03. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(vi) *Allowance for possible loan losses.* For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance of possible loan losses applicable to loans related to foreign activities.

(vii) If disclosure above is required, state separately in a note for each significant geographic area, and in the

aggregate for all other geographic areas not deemed significant, the following:

(A) total assets (net of valuation allowances)

(B) total operating income

(C) income (loss) before taxes and securities gains (losses)

(D) net income (loss)

Note.—A "significant geopraphic area" is one whose assets, operating income, or net income exceed 10 per cent of the comparable amount as reported in the related financial statements.

(10) *Foreign currencies.* The basis of conversion of all items in foreign currencies shall be stated, and the amount and disposition of the resulting unrealized profit or loss shown. Disclosure should be made as to the effect, insofar as this can be reasonably determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the bank and its subsidiaries.

(11) *Commitments.* If material in amount, the pertinent facts relative to from commitments for the acquisition, directly or indirectly, of fixed assets and for the purchase, repurchase, construction, or rental of assets under long-term leases shall be stated briefly in the balance sheet or in footnotes referred to therein. Where the rentals or obligations under long-term leases are material the following shall be set forth in a note to the appropriate financial statement:

(i) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is presented shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals.

(ii) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet required, in the aggregate for (A) each of the five succeeding fiscal years and (B) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amounts of such rentals). For purposes of this rule, a noncancelable lease is defined as one that has an initial or remaining term of more than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contingency or upon the payment of a substantial penalty.

(iii) Additional disclosures shall be made to report in general terms; (A) the basis for calculating rental payments if dependent upon factors other than the lapse of time; (B) existence and terms of renewal or purchase options, escalation clauses, etc.; (C) the nature and amount of related guarantees made or obligations asssumed; (D) restrictions on paying dividends, incurring additional debt, further leasing, etc.; and (E) any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

(12) *General notes to balance sheets.* If present with respect to the bank for which the statement is filed, the following shall be set forth in the balance sheet or in referenced notes thereto. Information required by paragraphs (e)(12), (i), (v), (vi), (vii), (viii), (ix) and (x) of this section shall be provided with the most recent fiscal year balance sheet and any interim date balance sheet being filed.

(i) *Assets subject to lien.* The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(ii) *Intercompany profits and losses.* The effect upon any balance sheet item of profits or losses, resulting from transactions with affiliated companies and not eliminated shall be stated. If impracticable of accurate determination without unreasonable effort or expense, an estimate or explanation shall be given.

(iii) *Pension and retirement plans.* (A) A brief description of the essential provisions of any employee pension or retirement plan and of the accounting and funding policies relating thereto shall be given; (B) The estimated annual cost of the plan shall be stated; (C) If a plan has not been funded or otherwise provided for, the estimated amount that would be necessary to fund or otherwise provide for the past-service cost of the land shall be disclosed; (D) The excess, if any, of the actuarially computed value of vested benefits over the total of the pension fund and any balance sheet accruals, less any pension prepayments or deferred charges, shall be stated as of the most recent practicable date; (E) A statement shall be given of the nature and effect of significant matters affecting comparability of pension costs for which income statements are presented.

(iv) *Capital stock optioned to officers and employees.* (A) A brief description of the terms of each option arrangement shall be given, including the title and amount of securities subject to the option, the year or years during which the options were granted, and the year or years during which the optionees became, or will become, entitled to exercise the options; (B) There shall be stated the number of shares under option at the balance sheet date, and the option price and the fair value thereof (per share and in total) at the dates the options were granted; the number of shares with respect to which options became exercisable during the period, and the option price and the fair value thereof (per share and in total) at the dates the options became exercisable; the number of shares with repsect to which options were exercised during the period, and the option price and the fair value thereof (per share and in total) at the dates the options were exercised; and the number of unoptioned shares available at the beginning and at the close of the the latest period presented, for the granting of options under an option plan. A brief description of the terms of each other arrangement covering shares sold or offered for sale to only directors, officers, and key employees shall be given, including the number of shares, and the offered price and the fair value thereof (per share and in total) at the dates of sale or offer to sell, as appropriate. The required information may be summarized as appropriate with respect to each of the categories referred to in this subclause (B); (C) The basis of accounting for such option arrangements and the amount of charges, if any, reflected in income with respect thereto shall be stated.

(v) *Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes.* Describe the most restrictive of any such restriction, other than as reported pursuant to Item 26(b) of Format F-9A, indicating briefly its source, its pertinent provisions, and where appropriate and determinable, the amount of the surplus and/or undivided profits (A) so restricted or (B) free of such restrictions.

(vi) *Contingent liabilities.* A brief statement as to contingent liabilities not reflected in the balance sheet shall be made.

(vii) *Standby letters of credit.* State the amount of outstanding "standby letters of credit." For the purpose of this paragraph, "standby letters of credit" include every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuing bank (A) to repay money borrowed by or advanced to or for the account of the account party or (B) to make payment on account of any

evidence of indebtedness undertaken by the account party, or (C) to make payment on account of any default by the account party in the performance of an obligation,[1] except that, if prior to or at the time of issuance of a stanby letter of credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit, or has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit, then the amount of that standby letter of credit need not be stated.

(viii) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated. Notation of such default or breach of covenant shall be made in the financial statements. If a default or breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(ix) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(x) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows: (A) Title of issue of securities called for by warrants or rights outstanding; (B) aggregate amount of securities called for by warrants or rights outstanding; (C) date from which warrants or rights are exercisable and expiration date; (D) price at which warrant or right is exercisable.

(13) *General notes to statement of income.* If present with respect to the bank for which the statement is filed, the following shall be set forth in the statement of income or in referenced notes thereto:

(i) *Intercompany profits and losses.* The amount of any profits or losses resulting from transactions between unconsolidated affiliated companies shall be stated. If impracticable of determination without unreasonable effort and expense, an estimate or explanation shall be given.

(ii) *Depreciation and amortization.* For the period for which statements of income are filed, there shall be stated the policy followed with respect to: (A) The provision for depreciation of physical properties or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (B) The provision for depreciation and amortization of intangible, or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (C) The accounting treatment for maintenance, repairs, renewals, and improvements; and (D) The adjustment of the accumulated valuation allowances for depreciation and amortization at the time the properties were retired or otherwise disposed of, including the disposition made of any profit or loss on sale of such properties.

(iii) *Bonus, profit sharing, and other similar plans.* Describe the essential provisions of any such plans in which only directors, officers or key employees may participate, and state, for each of the fiscal periods for which income statements are required to be filed, the aggregate amount provided for all plans by charges to expense.

(iv) *Income tax expense.* (A) Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including: (*1*) Taxes currently payable; (*2*) the net tax effects, as applicable, of (*i*) timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences where the amount of each such tax effects exceeds 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rates; other differences may be combined) and (*ii*) operating losses; and (*3*) the net deferred investment tax credits. Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component, unless the amounts applicable to foreign and other income taxes do not exceed 5 percent of the total for the component. (B) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess the year (or years) of occurrence and the reasons therefor. (C) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than 5 percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(v) *Interest capitalized.* The amount of interest cost capitalized in each period for which an income statement is presented shall be shown within the income statement. Banks which follow a policy of capitalizing interest cost shall make the following additional disclosures: (A) The reason for the policy of interest capitalization and the way in which the amount to be capitalized is determined. (B) The effect on net income for each period for which an income statement is presented of following a policy of capitalizing interest as compared to a policy of charging interest to expense as incurred.

(vi) *Disagreements on accounting and financial disclosure matters.* If, (A) within the twenty-four months prior to the date of the most recent financial statements, a Form F-3 has been filed reporting a change of accountants, (B) included in the Form F-3 there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (C) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (D) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the

[1] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation M of the Board of Governors of the Federal Reserve System.

disagreement and also state the effect on the financial statements if the method had been followed which the former accountant apparently concluded was required. The effects on the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(vii) *Disclosure of selected quarterly financial data in notes to financial statements.*

(A) *Exemption.* This rule shall not apply unless the bank meets the following conditions:

(*1*) The bank's securities registered under Section 12(g) of the Securities Exchange Act of 1934 are quoted on the National Association of Securities Dealers Automated Quotation System and (*i*) meet the requirements for continued inclusion on the list of OTC margin stocks set forth in section 220.8(i) of Regulation T of the Board of Governors of the Federal Reserve System or (*ii*) the bank has securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; and

(*2*) The bank and its consolidated subsidiaries (*i*) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal years; or (*ii*) had total assets of at least $200,000,000 as of the end of the last fiscal year.

(B) *Disclosure requirement.*

(1) Disclosure shall be made in a note to financial statements of total operating income, income before securities gains (losses), income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(2) When the data required by the preceding paragraph above vary from the amounts previously reported on the Form F–4 filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(3) Describe the effect of any unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.

(4) Where this note is part of audited financial statements, it may be designated "unaudited."

(f) *Consolidated financial statements.* (1) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statements of the bank and its majority-owned significant subsidiaries should be filed.

(2) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations") shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(3) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the bank's fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and the subsidiary made during the period of report are indicated clearly.

(4) There shall be set forth in a note to each consolidated balance sheet filed a statement of any difference between the investment in subsidiaries consolidated, as shown by the bank's books, and the bank's equity in the net assets of such subsidiaries as shown by the subsidiaries' books. If any such difference exists, there shall be set forth the amount of the difference and the disposition made thereof in preparing the consolidated statements, naming the balance sheet captions, and stating the amount included in each.

(5) There may be filed financial statements in which majority-owned subsidiaries not consolidated with the parent are consolidated or combined in one or more groups, and 50 per cent or less owned persons, the investments in which are accounted for by the equity method are consolidated or combined in one or more groups, pursuant to principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the group or groups.

(6) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (i) subsidiaries and (ii) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(7) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Board which has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If there have been any changes in the respective fiscal periods of the persons included made during the periods of the report which have a material effect on the financial statements, indicate clearly such changes and the manner of treatment.

(8) A statement shall be made in a note to the latest balance sheet of the amount and the accounting treatment of any difference between the investment of a bank and its consolidated subsidiaries, as shown in the consolidated balance sheet, in the unconsolidated subsidiaries and 50 per cent or less owned persons accounted for by the equity method, and their equity in the net assets of such unconsolidated subsidiaries and 50 per cent or less owned persons.

(g) *Statement of changes in equity capital.* A statement of changes in equity capital shall be filed with each statement of income filed pursuant to this part.

(h) *Statement of changes in financial position.* A statement of changes in financial position shall be filed with each statement of income filed pursuant to this part.

(i) *Schedules to be filed.* (1) The following schedules shall be filed with each balance sheet filed pursuant to this part: Schedule I—U. S. Treasury Securities, Obligations of other U. S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures; Schedule III—Loans; and Schedule IV—Bank Premises and Equipment.

(2) The following schedule shall be filed with each statement of income filed pursuant to this Part: Schedule II—Loans to Officers, Directors, Principal Security Holders, and any Associates of the Foregoing Persons; Schedule V—Investments in, Income from Dividends, and Equity in Earnings or losses of Subsidiaries and Associated Companies; and Schedule VI—Allowance for Possible Loan Losses.

(3) Reference to the schedules referred to in paragraphs (i)(1) and (2) of this

section shall be made against the appropriate captions of the balance sheet or statement of income.

(4) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

2. Section 335.71 is revised as follows:

§ 335.71 Format F-9 financial statements.

A. Balance Sheet (Format F-9A)
B. Statement of Income (Format F-9B)
C. Statement of Changes in Equity Capital (Format F-9C)
D. Statement of Changes in Financial Position (Format F-9D)
E. Schedules (Format F-9E)

General Instructions

1. *Preparation of Financial Statements.*—The formats are intended to serve as guides for preparation of financial statements required to be filed pursuant to this Part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Part 335 are found in the instructions to such forms.

Requirements set forth in Section 335.7 of this Part shall be applicable to financial statements filed pursuant to Part 335. The term, "financial statements," as used in this instruction, includes all required notes to financial statements and all required schedules.

2. *Accrual accounting.*—Financial statements shall generally be prepared on the basis of accrual accounting whereby all revenues and all expenses shall be recognized during the period earned or incurred regardless of the time received or paid, with certain exceptions: (a) where the results would be only insignificantly different on a cash basis, or (b) where accrual is not feasible. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments that were necessary and their effect on prior financial statements filed under this Part.

3. *Negative Amounts.*—Negative amounts shall be shown in brackets or parentheses and so described in the related caption, columnar heading or a note to the statement or schedule, as appropriate.

4. *Items not Material.*—If the amount that would otherwise be required to be shown with respect to any items is not material, it need not be separately set forth.

5. *Inapplicable Captions and Omission of Unrequired or Inapplicable Financial Statements and Schedules.*—No caption need be shown in any financial statement or schedule if the items and conditions are not present. Financial statements and schedules not required or inapplicable because the required matter is not present need not be filed, but the statements and schedules omitted and the reasons for their omission shall be indicated in the list of financial statements and schedules required by the applicable form.

A. Balance Sheet

The Balance Sheet shall be prepared in accordance with the *Instructions* for the Preparation of the Consolidated Report of Condition (FDIC 8040/11, 12 or 13, as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note: Banks subject to this Part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this Part.

Assets

1. *Cash and due from depository institutions.*—(a) State separately (1) interest bearing deposits in other banks and (2) noninterest bearing deposits and cash. (See Schedule C of FDIC 8040/12 or 13.)

2. *U.S. Treasury Securities:*

3. *Obligations of other U.S. Government agencies and corporations.*

4. *Obligations of States and political subdivisions in the United States.*

5. *Other bonds, notes and debentures.*

6. *Federal Reserve stock and corporate stock.*—(a) With respect to Items 2, 3, 4, 5 and 6, state parenthetically on the balance sheet or in a note for each category the aggregate amount on the basis of market quotations or fair value of securities at the balance sheet date.

(b) With respect to Items 2, 3, 4, 5 and 6, state in a note the basis by which book value is determined. Bond premium shall be amortized and discount shall be accreted.

(c) With respect to Items 4, 5 and 6, as applicable, state in a note the name of issuer, aggregate book value and aggregate amount on the basis of market quotations or fair value of the securities of any issuer for which the aggregate book value exceeds 10 per cent of the equity capital accounts of the bank. Debt securities issued by a State of the United States and its political subdivisions and agencies which are payable from and secured by the same source of revenue or taxing authority shall be considered to be securities of a single issuer. Consideration shall be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics of different issues of securities of an issuer as may be appropriate.

7. *Trading account securities.*—(a) State in a note whether securities in the trading account are valued at lower of cost or market. If market basis is not used, in valuing the trading account securities inventory, furnish the aggregate fair market value at each balance sheet date.

8. *Federal funds sold and securities purchased under agreements to resell.*

9. *Loans (net of unearned income).*

Less: Allowance for possible loan losses.

Loans, net.

(a) If the amount exceeds 5 per cent of equity capital, state in a note the aggregate amount of loans outstanding to officers, directors and principal security holders and associates. Amounts to be reported shall include loans from the bank or any subsidiary. It shall not be necessary to disclose amounts related to individuals for household, family and other personal expenditures made in the ordinary course of business that (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

10. *Lease financing receivables.*

11. *Bank Premises, furniture and fixtures and other assets representing bank premises.*

12. *Real estate owned other than bank premises.*—(a) State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) a reconciliation of any valuation allowance account.

13. *Investments in unconsolidated subsidiaries and associated companies.*

14. *Customers' liability to this bank on acceptances outstanding.*

15. *Other assets.*

16. *Total assets.*

Liabilities

17. *Deposits.*—(a) State separately.

(1) Demand deposits in domestic bank offices.

(2) Savings deposits in domestic bank offices.

(3) Time deposits in domestic bank offices.

(4) Deposits in foreign offices.

(See Schedule F and FF of FDIC 8040/12 or FDIC 8040/13, as applicable.)

(b) State in a note the aggregate amount of (1) time certificates of deposit and (2) other time deposits in denominations of $100,000 or more in domestic offices. (See Memoranda Items 1 (b) and (c) of FDIC 8040/12 or 13, as applicable.)

18. *Federal funds purchased and securities sold under agreements to repurchase.*—(a) If the approximate average balance outstanding during the period for any category was more than 30 per cent of equity capital accounts, state in a note with respect to each activity category the following:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end-of-period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

19. *Interest-bearing demand notes (note balance) issued to the U.S. Treasury.*

20. *Other liabilities for borrowed money.*—See supplemental instruction to Item 18.

12. *Mortgage indebtedness and liability for capitalized leases.*—(a) State in a note material terms and conditions of each obligation including (but not limited to) (1) the general character of the debt, (2) the rate of interest, (3) the date of maturity, or if maturing serially, a brief indication of the serial maturities, (4) if the payment of principal or interest is contingent, an

appropriate indication of such contingency, (5) a brief indication of priority and (6) the amount outstanding at the balance sheet date.

(b) Furnish in tabular form the combined aggregate amount of maturities and sinking fund requirements for all obligations, each year for the five years following the date of the balance sheet.

(c) If there are any liens on bank premises or other real estate owned by the bank or its consolidated subsidiaries which have not been assumed by the bank or its consolidated subsidiaries, state in a note the amount thereof together with an appropriate explanation.

22. *Bank's liability on acceptances executed and outstanding.*

23. *Other liabilities.*

24. *Total Liabilities* (excluding subordinated notes and debentures).

25. *Subordinated notes and debentures.*—(a) State in a note material terms and conditions of each obligation including (but not limited to) (1) the general character of the debt, (2) the rate of interest, (3) the date of maturity, or if maturing serially, an indication of serial maturities, (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency, (5) a brief indication of priority and (6) the amount outstanding at the balance sheet date.

(b) Furnish in tabular form the combined aggregate amount of maturities and sinking fund requirements for all obligations, each year for the five years following the date of the balance sheet.

Equity Capital

26. *Preferred stock.*—(a) State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par or stated value per share and the capital share liability thereof, and if convertible, the basis of conversion. Show also the dollar amount, if any, of shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom.

(b) State in a note (1) If callable, the date or dates and the amount per share at which such shares are callable, (2) if convertible, the terms of the conversion, (3) any arrears in cumulative dividends per share and in total for each class of shares, and (4) the preferences on involuntary liquidation, if other than the par or stated value. When the excess involved is material, there shall be shown the difference between the aggregate preference on involuntary liquidation and the aggregate par or stated value, a statement that this difference (plus any arrears in dividends) exceeds the sum of the par or stated value of the junior capital shares, surplus, and undivided profits including reserve for contingencies and other capital reserves if such is the case, and a statement as to the existence (or absence) of any restrictions upon surplus and/or undivided profits growing out of the fact that upon involuntary liquidation the preference of the preferred stock exceeds its par or stated value.

27. *Common stock.*—(a) State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par or stated value per share and the capital share liability thereof. Show also the dollar amount, if any, of shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom.

28. *Surplus.*

29. *Undivided profits.*

30. *Reserve for contingencies and other capital reserves.*

31. *Total Equity Capital.*

32. *Total Liabilities and Equity Capital.*

General Notes to the Balance Sheets

If present with respect to the bank for which the statement is filed, the following topical information shall be furnished in notes to the balance sheets:

1. *Assets subject to Lien.*

2. *Intercompany profits and losses.*

3. *Pension and Retirement Plans.*

4. *Capital Stock Optioned to Officers and Employees.*

5. *Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes.*

6. *Contingent liabilities.*

7. *Standby letters of credit.*

8. *Defaults.*

9. *Significant Changes in Bonds, Mortgages, and Similar Debt.*

10. *Warrants or rights outstanding.*

For detailed instructions as to required content of above general notes to the balance sheet, refer to Section 335.7(e)(12) of Part 335.

B. Statement of Income

The Statement of Income shall conform generally to the Consolidated Report of Income (FDIC 8040/01A, 02, or 02A, as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities and Exchange Act of 1934, as amended.

Note.—Banks subject to this Part are required to report on an accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Statement of Income required under this Part:

1. *Operating Income:* (a) *Interest and fees on loans.*

(b) *Interest on balances with depository institutions.*

(c) *Income on Federal funds sold and securities purchased under agreements to resell in domestic offices of the bank and of its Edge and Agreement subsidiaries.*

(d) *Interest on U.S. Treasury securities.*

(e) *Interest on obligations of other U.S. Government agencies and corporations.*

(f) *Interest on obligations of States and other political subdivisions in the U.S.*

(g) *Interest on other bonds, notes and debentures.*

(h) *Dividends on stock.*

(i) *Income from lease financing.*

(j) *Income from fiduciary activities.*

(k) *Service charges on deposit accounts in domestic offices.*

(l) *Other service charges, commissions and fees.*

(m) *Other operating income.*

(n) *Total Operating Income.*

2. *Operating Expenses:* (a) *Salaries and employee benefits.*

(b) *Interest on time certificate of deposits of $100,000 or more issued by domestic offices.*

(c) *Interest on deposits in foreign offices.*

(d) *Interest on other deposits.*

(e) *Expense of Federal funds purchased and securities sold under repurchase agreements in domestic offices of the bank and of its Edge and Agreement subsidiaries.*

(f)(1) *Interest on demand notes (note balances) issued to the U.S. Treasury.*

(2) *Interest on other borrowed money.*

(g) *Interest on subordinated notes and debentures.*

(h)(1) *Occupancy expense of bank premises, Gross.*

(2) *Less—Rental income.*

(3) *Occupancy expense of bank premises, Net.*

(i) *Furniture and equipment expense.*

(j) *Provision for possible loan losses.*

(k) *Other operating expenses.*

(l) *Total Operating Expenses.*

3. *Income (Loss) Before Taxes And Securities Gains (Losses).*

4. *Applicable Income Taxes.*

5. *Income (Loss) Before Securities Gains (Losses).*

6. (a) *Securities Gains (Losses), Gross.*

(b) *Applicable Income Taxes.*

(c) *Security Gains (Losses), Net.*

7. *Income (Loss) Before Extraordinary Items And Cumulative Effects of Changes In Accounting Principles.*

8. *Extraordinary Items, Less Applicable Income Tax.*

9. *Cumulative Effects Of Changes In Accounting Principles.*

10. *Net Income (Loss).*

11. *Earnings (Loss) Per Common Share.*[1] (a) *Income (Loss) Before Securities Gains (Losses).*

(b) *Net Income.*

Earnings per common share. State the per share amounts applicable to common stock (including common stock equivalents) and per share amounts on a fully diluted basis, if applicable. The basis of computation, including the number of shares used, shall be furnished in a note to the financial statements.

General Notes to the Statement of Income

If present with respect to the bank for which the statement is filed, the following topical information shall be furnished in notes to the Statement of Income.

1. *Intercompany profits and losses.*

2. *Depreciation and amortization.*

3. *Bonus, profit sharing, and other similar plans.*

4. *Income tax expense.*

5. *Interest capitalized.*

6. *Disagreements on accounting and financial disclosure matters.*

7. *Disclosure of selected quarterly financial data in notes to financial statements.*

For detailed instructions as to required content of above general notes to the

[1] If amounts are entered for Item 8 and/or 9, per share amounts shall be stated separately for Items 5, 8 and/or 9, and 10.

statement of income, refer to Section 335.7(e)(13) of Part 335.

C. Statement of Changes in Equity Capital

The format and content of the Statement of Changes in Equity Capital shall conform generally to Section B of the Consolidated Report of Income (FDIC 8040/02) and related instructions thereto except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

The following supplemental instructions shall be observed in the preparation of the Statement of Changes in Equity Capital required under this Part.

Reconcile the various equity capital accounts individually as follows:

1. *Balance end of previous year.*
2. *Prior Period Adjustment.*[2]

(a) Cumulative effect type changes in accouting principles shall be reported under Item 9 of the Statement of Income.

3. *Adjusted balance end of previous year.*
4. *Net income (loss).*
5. *Sale, conversion, acquisition, or retirement of capital net:* (a) *Transactions with own holding company or affiliates.* (b) *Other.*
6. *Changes incident to mergers and absorptions, net*
7. *Less: Cash dividends declared on common stock*
8. *Less: Cash dividends declared on preferred stock*
9. *Stock dividend issued*
10. *Other increases (decreases)*[2]
11. *Balance end of period*

D. Statement of Changes in Financial Position

Sources of Funds.—Operations:
Net Income.
Charges (Credits) to Income not affecting Funds: Total Funds provided by Operations.
Equity Funds—Proceeds.
Subordinated Notes and Debentures—Sale Proceeds
Increase (Decrease) in Liabilities:
Total.
Applications of Funds.
Payment of Dividends.
Purchase of Property and Equipment.
Increase (Decrease) in Assets:[3]

E. Schedules

SCHEDULE I.—*U.S. Treasury Securities, Obligations of Other U.S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures*

Type and maturity grouping	Book value [1]	Market value
U.S. Treasury securities:		
Within 1 year		
After 1 but within 5 years		

[2] State separately any material amounts, indicating clearly the nature of the transaction our of which the item arose.

[3] Sources and applications of funds items shall be shown separately by amounts when they exceed 5 per cent of the average of total funds provided during the respective reported periods.

SCHEDULE I.—*U.S. Treasury Securities, Obligations of Other U.S. Government Agencies and Corporations, Obligations of States and Political Subdivisions, and Other Bonds, Notes and Debentures*—Continued

Type and maturity grouping	Book value [1]	Market value
After 5 but within 10 years		
After 10 years		
Total U.S. Treasury securities		
Obligations of other U.S. Government agencies and corporations:		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total securities of other U.S. Government agencies and corporations		
Obligations of States and political subdivisions: [2] [3]		
Within 1 year		
After 1 but within 5 years		
After 5 but within 10 years		
After 10 years		
Total obligations of States and political subdivisions		
Other bonds, notes and debentures [3]		

[1] State briefly in a footnote the basis for determining the amounts in this column.

[2] Include obligations of the States of the United States and their political subdivisions, agencies, and instrumentalities; also obligations of territorial and insular possessions of the United States. Do not include obligations of foreign states.

[3] State in a footnote the aggregate (a) book value and (b) market value of securities that are less than "investment grade". If market value is determined on any basis other than market quotations at balance sheet date, explain.

Note: See Schedule B of FDIC 6040/11, 12, or 13, as applicable.

Schedule III—Loans

Type	Book value
Loans in domestic offices	
Real estate loans:	
Insured or guaranteed by the U.S. Government or its agencies	
Other	
Loans to financial institutions	
Loans for purchasing or carrying securities (secured or unsecured)	
Loans to finance agricultural production and other loans to farmers	
Commercial and industrial loans	
Loans to individuals for household, family and other personal expenditures	
All other loans (including overdrafts)178	
Loans in foreign offices	
Total loans, gross	
Less: Unearned income on loans	
Total loans (excluding unearned income)	

Note: See Schedule A of FDIC 6040/11, 12, or 13, as applicable.

Schedule IV—Bank Premises and Equipment

Classification	Column A: Gross book value [1]	Column B: Accumulated depreciation and amortization [2]	Column C: Amount at which carried on balance sheet
Bank premises (including land $. . .)			
Equipment			
Leasehold improvements			
Totals			

[1] State the basis of determining the amounts in column A.

[2] The nature and amount of significant additions (other than provisions for depreciation and amortization) and deductions from depreciation accounts shall be stated in an explanatory footnote.

Schedule II—*Loans to Officers, Directors, Principal Security Holders, and any Associates of the Foregoing Persons* [1]

Col. A	Col. B	Col. C	Col. D: Deductions		Col. E
Name of borrower [2]	Balance at beginning of period	Additions	(1) Amounts collected [3]	(2) Amounts charged off	Balance at end of period

[1] Provide information if at any time during the period for which related income statements are required to be filed, loans to a specified person and associates exceeded 2½% of equity capital of the bank or $500,000, whichever is less.

It shall not be necessary to include amount of loans related to individuals for household, family and other personal expenditures made in the ordinary course of business as defined in Item 9(a) of Format F-9A, Balance Sheet.

Loans to directors (and any associates) who are neither officers nor principal security holders may be stated in the aggregate. The number of directors for whom loans are stated in the aggregate shall be indicated in Column A.

[2] State in a note hereto pertinent information such as the maturity date, interest rate, terms of repayment and collateral, if any, of loans made to the specified persons named in Column A as of the date of the most recent balance sheet being filed.

[3] If collection was other than cash, explain.

Schedule V—*Investments in, Income From Dividends, and Equity in Earnings or Losses of Subsidiaries and Associated Companies*

Name of issuer [1]	Col. A Percent of voting stock owned	Col. B Total investment	Col. C Equity in underlying net assets at balance sheet date [2]	Col. D Amount of dividends [3]	Col. E Bank's proportionate part of earnings or loss for the period
Totals					

[1] Group separately securities of (a) subsidiaries consolidated, (b) subsidiaries not consolidated, and (c) associated companies. Show shares, bonds, notes and advances separately in each case.

[2] Equity shall include advances and other obligations reported in column B to the extent recoverable.

[3] State as to any dividends other than cash the basis on which they have been reported as income. If any such dividend received has been credited to income in an amount differing from that charged to surplus and/or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

Schedule VI—*Allowance for Possible Loan Losses*

	Amount
Balance end of previous period	
Recoveries credited to allowance	
Changes incident to mergers and absorptions [1]	
Provision for possible loan losses	
Less: Losses charged to allowance	
Foreign currency translation adjustment	
Balance end of period [2]	

[1] Describe briefly in a footnote any such addition.

[2] State in a footnote (1) the amount deducted for Federal income tax purposes, (2) the maximum amount that could have been deducted for Federal income tax purposes, and (3) the balance of the allowance at the end of the period as reported for Federal income tax purposes.

Note: See Schedule C of FDIC 8040/02.

[FR Doc. 79-39576 Filed 12-27-79; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 7a, 7b, and 7c

Proposed Amendment to the National Voluntary Laboratory Accreditation Program Procedures To Permit the Inclusion of Additional Relevant Standards and Test Methods in a Laboratory Accreditation Program Established Under Those Procedures

AGENCY: Assistant Secretary of Commerce for Science and Technology.

ACTION: Proposed rule.

SUMMARY: This amendment to the National Voluntary Laboratory Accreditation Program (NVLAP) procedures (15 CFR Parts 7a, 7b, and 7c) provides a method by which additional standards and test methods can be included in the list of standards and test methods in a laboratory accreditation program (LAP) established under those procedures when (1) such addition is requested in writing by any member of the public, and (2) such additional standards and test methods meet certain conditions as set out in this notice.

DATES: Interested parties are requested to submit their comments not later than February 26, 1980.

ADDRESS: Comments should be in writing and addressed to Dr. Jordan J. Baruch, Assistant Secretary for Science and Technology, Room 3864, U.S. Department of Commerce, Washington, D.C. 20230, or delivered to Room 3864, Main Commerce Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-3221.

SUPPLEMENTARY INFORMATION:

Summary

In requesting a LAP under 15 CFR Parts 7a, 7b, and 7c, the requestor of the LAP must include the text of applicable standards and test methods. The procedures are silent on the issue of including standards and test methods for a product for which a LAP is being or has been established in addition to those submitted by the original requestor of the LAP. In response to requests for public comment on the establishment of need for a LAP in thermal insulation materials, and in response to requests for comment on proposed criteria to be used in evaluating testing laboratories in a LAP for carpet, the Department of Commerce (DOC) has received comments requesting that those two LAPs include additional standards and test methods. Similar requests are possible during the operation of future LAPs that may be established.

DOC believes that it would be appropriate to include such additional standards and test methods in a LAP, when requested to do so in writing, if those additional standards and test methods are (1) directly relevant to the product identified in the LAP; (2) technically suitable so that the capability of a testing laboratory to perform the tests can be evaluated; (3) such that the evaluation of a testing laboratory can be accomplished by using the final accrediting criteria already established for the LAP; and (4) likely to be those for which testing laboratories will seek accreditation. DOC does not view this proposed amendment to the NVLAP procedures as being contrary to any finding of need established under the NVLAP procedures because no change in the identification of the product for which a LAP was established is permitted. In the final analysis, NVLAP is a voluntary program, and accreditation would be sought for additional test methods only if a testing laboratory found such accreditation of value.

Background

NVLAP was established by notice in the Federal Register on February 25, 1976 (41 FR 8163-8166, 15 CFR Part 7 which recently has been redesignated 15 CFR Part 7a). That notice, amended by optional procedures for use by Federal agencies (15 CFR Part 7b) published in the Federal Register on March 9, 1979 (44 FR 12982-12990), and optional procedures for use by private sector organizations (15 CFR Part 7c) published in the Federal Register on April 25, 1979 (44 FR 24274-24282), describes the procedures which are to be used for developing laboratory accreditation programs (LAPs). The NVLAP procedures (Parts 7a, 7b, and 7c), require a requestor (of a LAP) to state in writing the product and the standards and test methods which the requestor desires to have included in the LAP. The procedures are silent on the issue of including additional standards and test methods for a product beyond those submitted by the original requestor seeking the LAP.

In response to the proposed criteria for the first LAP published in the Federal Register on September 29, 1978, (43 FR 45290-45298) which concerned thermal insulation materials, comments were

received suggesting that certain test methods, including test methods appearing in the regulations of the Consumer Product Safety Commission, should be added to the program. In response to this suggestion, DOC indicated that such a request amounts to an extension of the finding of need for the LAP and thus could be added only by employing the full finding of need provisions of the procedures.

On September 28, 1979 criteria for two additional LAPs concerning concrete and carpet were proposed (44 FR 56230–56263). The carpet LAP was requested by the Department of Housing and Urban Development (HUD) under Part 7b procedures and published in the Federal Register on June 18, 1979 (44 FR 35000). Several commenters requested in writing and during a public hearing that certain additional test methods be added to the carpet LAP.

In addition, DOC believes that other requests may be received from the public during the operation of future LAPs, particularly after a LAP has been implemented for several years and new standards and test methods related to the program are developed and adopted for use.

Adding Standards and Test Methods in Response to a Written Request

Since the issue of adding standards and test methods to the list of those previously announced is likely to be a recurring issue, DOC proposes to amend the procedures as set forth in this notice to permit the inclusion of additional relevant standards and test methods in a LAP in response to a written request from the public. This would be done only in those cases where there would be no need to change the accrediting criteria. Since NVLAP is a voluntary program which has been designed as a public service that is funded by the participants, DOC believes that every attempt should be made to provide for accreditation of all those test methods of interest to the laboratories which test the product for which a LAP has been established.

Request for Comments

Interested persons desiring to comment on this proposed amendment to the procedures relating to 15 CFR Part 7a.4(i), Part 7b.4(e), and Part 7c.4(f) are invited to submit their comments on or before February 26, 1980 to the Assistant Secretary for Science and Technology, at the address shown earlier in this notice. All written comments that are furnished in response to this invitation will become part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. 20230.

Dated: December 21, 1979.

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

§§ 7a.4, 7b.4, 7c.4 [Amended]

This proposal would amend the NVLAP procedures by adding Sections 7a.4(i), 7b.4(e) and 7c.4(f), all to read as follows:

"If a person requests in writing that certain standards and test methods be added to a laboratory accreditation program established under these NVLAP procedures, the Secretary may choose to add such additional standards and test methods when, in the Secretary's judgement—

(1) The standards and test methods are directly relevant to the product for which the LAP was established;

(2) The standards or test methods are found to be technically suitable so that the capability of a laboratory to perform the tests can be evaluated;

(3) The standards and test methods are such that the evaluation of a laboratory can be accomplished by using final accreditation criteria already established for the laboratory accreditation program under Part 7a.8 (or under sections 7b.8 or 7c.8 as applicable) of these procedures; and

(4) The standards and test methods requested are likely to be those for which testing laboratories will seek accreditation."

The notice shall provide at least a sixty (60) day period for submission of written comments therein. All comments will be filed in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce Building, 14th Street between E Street and Constitution Avenue, N.W., Washington, D.C. 20230, and will be available for public inspection and copying at that location.

After evaluating the comments received, the Secretary shall publish a notice in the Federal Register identifying the standards and test methods to be added to the LAP or withdrawing the proposal to all such standards and test methods.

[FR Doc. 79-39629 Filed 12-27-79; 8:45]

BILLING CODE 3510-13-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 660

[Docket No. 79N-0076]

Antibody to Hepatitis B Surface Antigen Reduction in the Number of Samples Submitted

AGENCY: Food and Drug Administration

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations reducing the number of samples of diagnostic test kits containing Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I that must be submitted to FDA's Bureau of Biologics (the Bureau) for testing after licensure and official release of at least five consecutive lots of diagnostic test kits. Tests conducted by the Bureau show that it is no longer necessary to require samples from every lot of diagnostic test kits produced once a manufacturer is issued a license for the product and consistency in regular production is established.

DATE: Coments by February 26, 1980.

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

FOR FURTHER INFORMATION CONTACT: Richard E. Fisher, Bureau of Biologics (HFB–620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Antibody to Hepatitis B Surface Antigen is a licensed diagnostic reagent used to detect Heptatitis B Surface Antigen in the serum of blood and plasma donors. A blood or plasma donor whose serum gives a positive reaction in a test with this diagnostic reagent is rejected from any further donations because the donor may be a potential carrier of viral hepatitis that can be transmitted by blood transfusion to a recipient or by the exposure of these contaminated products to their processors and other handlers. To reduce the risk of transmitting viral hepatitis through these human blood products, § 610.40 of the biologics regulations (21 CFR 610.40) requires that each donation of blood and plasma used in preparing a biological product be tested for the presence of Heptatitis B Surface Antigen. Only licensed Antibody to Hepatitis B Surface Antigen can be used in performing the tests. Section 610.40(b)(3) also requires

that testing be performed by the facility collecting the blood or by written agreement with a clinical laboratory meeting the standards of the Clinical Laboratories Improvement Act and qualified to perform radioimmunoassay or other acceptable third-generation sensitivity tests for the presence of Hepatitis B Surface Antigen. Both the Clinical laboratories and the licensed manufacturers who do their own testing for hepatitis are required to participate in proficiency testing programs undertaken by the Bureau of Biologics (§ 610.40(e)).

The regulations governing the manufacture of Antibody to Hepatitis B Surface Antigen are prescribed in §§ 660.1 through 660.5 (21 CFR 660.1 through 660.5). Section 660.2(f)(2) provides that Antibody to Hepatitis B Surface Antigen that has been iodinated with ^{125}I may be issued by the manufacturer without obtaining an official release from the Director of the Bureau (the Director), provided the manufacturer submits a protocol of tests and a sample from each lot of the diagnostic test kit.

When a new product is being developed by a manufacturer, smaller lots or fewer lots are produced to avoid loss of valuable source material until specifications are established and the product is licensed. After licensing, production is increased to meet marketing needs. To assure the continuing quality and reliability of the product during this transition period, the license requires that manufacturers send samples of each lot of diagnostic test kits manufactured after licensing to the Bureau until the manufacturer has received written notification of official release of each of at least five consecutive lots of diagnostic test kits from the Director. Following written notification by the Director, subsequent lots of diagnostic test kits may then be released by the manufacturer as provided in § 660.2(f)(2) without obtaining official release, provided the manufacturer sends a protocol of tests and a sample of every lot of diagnostic test kits produced no more than 1 day following the manufacturer's release date. A written notification of official release is not required for all lots of diagnostic test kits manufactured because the product has a short dating period (shelf life) of 45 days.

During the past 3 years, there has been an increase in the number of manufacturers licensed for Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I and a 50-percent increase in the number of samples of diagnostic test kits of this product received by the Bureau. As a result, the number of samples of diagnostic test kits submitted now exceeds the number that can actually be tested. To determine the continued practicality of this sample submission procedure, the Bureau has evaluated the effectiveness of the product along with the testing capabilities of the licensed manufacturers or their testing laboratories by obtaining and reviewing data received from five hepatitis proficiency panels distributed from February 1975 through September 1977. The results of this review show that of the 1,164 establishments participating in the proficiency testing program, the rate of detecting hepatitis reactive samples (among coded negative and weakly reactive to strongly reactive samples) was 98.2 percent by radioimmunoassay.

The Bureau's experience in testing samples of lots of diagnostic test kits received and the satisfactory results of proficiency testing support the conclusion that it is unnecessary for manufacturers to send samples of every lot of diagnostic test kits produced after consistency in manufacturing has been established following licensing. A reduction in the number of samples of diagnostic test kits submitted thereafter would relieve an unnecessary burden on the manufacturers in loss of product and cost of mailing as well as a reduction in the cost of storing, testing, and disposing of samples of diagnostic test kits in the Bureau.

Accordingly, FDA proposed to amend § 660.2 by revising paragraph (f) to include provisions for retention samples of diagnostic test kits and adding a new § 660.6 *Samples, protocols, official release.* The current provisions of § 660.2(f)(1) concerning Antibody to Hepatitis B Surface Antigen not iodinated with ^{125}I are transferred to proposed § 660.6(a) and have been edited for consistency in format with paragraph (b). Proposed § 660.6(b) concerns Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I and requires submission of one finished package of each lot of diagnostic test kits manufactured after licensing until written notification of official release is received for each of at least five consecutive lots. Each lot of diagnostic test kits must be withheld from distribution until such official release is received from the Director. After the manufacturer receives written notification that official release is no longer required, one finished package of a lot of diagnostic test kits must be submitted at periodic intervals of 90 days, and the manufacturer may release the product for distribution without obtaining official release. The lot of diagnostic test kits from which a sample is to be submitted must be the first one with the date of manufacture after the ninetieth day. Proposed § 660.6(b)(1)(iii) adds a requirement for sample submission of lots of diagnostic test kits if the Director finds that the product fails to maintain reliability in complying with the standards for this product. This action would be taken for the length of time necessary to reassure continuing reliability in compliance with the standards.

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

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 660 be amended as follows:

1. In § 660.2 by revising paragraph (f) to read as follows:

§ 660.2 General requirements.

* * * * *

(f) *Retention samples.* Each manufacturer shall retain representative samples of the product in accordance with § 600.13 of this chapter except for that which has been iodinated with radioactive iodine. Retention samples of Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I shall consist of a minimum of two complete finished packages of each lot of the diagnostic test kit and shall be retained for a period of at least 90 days from the date of manufacture.

2. By adding new § 660.6 to Subpart A to read as follows:

§ 660.6 Samples, protocols, official release.

(a) *Antibody to Hepatitis B Surface Antigen not iodinated with ^{125}I*—(1) *Samples.* Each manufacturer shall submit a sample of each filling of each lot packaged as for distribution, including all ancillary reagents and materials, to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

(2) *Protocols.* Each manufacturer shall submit a protocol that consists of a summary of the history of manufacture of each filling of each lot, including all results of each test for which test results

are requested by the Director, to the Director, Bureau of Biologics.

(3) *Official release.* The product must not be distributed by the manufacturer until written notification of official release of each filling of each lot is received from the Director, Bureau of Biologics.

(b) *Antibody to Hepatitis B Surface Antigen iodinated with ^{125}I*—(1) *Samples.* Each manufacturer shall submit the following samples of lots of diagnostic test kits in finished packages, including all ancillary reagents and materials, to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205, within 1 working day after the manufacturer has satisfactorily completed all tests of the finished packaged material:

(i) One finished package of each lot of diagnostic test kits until written notification of official release is no longer required under paragraph (b)(3) of this section.

(ii) One finished package of a lot of diagnostic test kits at periodic intervals of 90 days, after written notification of official release is no longer required under paragraph (b)(3)(ii) of this section. Submit a sample of the first lot of diagnostic test kits with a date of manufacture after the ninetieth day. Identify the finished package as "surveillance sample."

(iii) Samples of any lot of diagnostic test kits may at any time be required to be submitted to the Director, Bureau of Biologics, if the Director finds that the product fails to maintain reliability in complying with the standards for this product.

(2) *Protocols.* For each sample of a lot of diagnostic test kits submitted as required in paragraph (b)(1) of this section, the manufacturer shall send a protocol that consists of a summary of the history of manufacture of the lot, including all results of each test for which test results are requested by the Director, Bureau of Biologics. The protocols submitted with the samples at periodic intervals as provided in paragraph (b)(1)(ii) of this section shall be identified by the manufacturer as "surveillance test results."

(3) *Official release.* (i) The manufacturer shall not distribute a lot of diagnostic test kits until written notification of official release is received from the Director, Bureau of Biologics. Official release is required for at least five consecutive lots of diagnostic test kits manufactured after licensure of the product.

(ii) After written notification of official release is received from the Director, Bureau of Biologics, for at least five consecutive lots of diagnostic test kits, and after the manufacturer receives written notification that official release is no longer required, subsequent lots of diagnostic test kits may be released by the manufacturer pursuant to the requirements of § 610.1 of this chapter.

(iii) The manufacturer shall not distribute lots of diagnostic test kits that require sample submission under paragraph (b)(1)(ii) of this section until written notification of official release or notification that official release is no longer required is required is received from the Director, Bureau of Biologics.

Interested persons may, on or before February 26, 1980. submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: December 19, 1979.

William F. Randolph

Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 79-39550 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-93-79]

Continuity of Business Enterprise Requirement for Corporate Reorganizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations clarifying the continuity of business enterprise requirement for corporate reorganizations. The continuity of business enterprise requirement is fundamental to the notion that tax-free reorganizations merely readjust continuing interests in property. Recent developments involving the availability of tax-free reorganization treatments for certain mutual fund transactions require clarification, in general, of the continuity of business enterprise requirement.

DATE: Written comments and requests for a public hearing must be delivered or mailed by February 25, 1980. The amendments are proposed to be effective for transfers made after 30 days after date this regulation is published as a Treasury Decision in the Federal Register.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention CC:LP:T (LR–93–79), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Richard L. Mull of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, Attention CC:LR:T (202–566–3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 368 of the Internal Revenue Code of 1954. These amendments clarify the requirement of continuity of business enterprise in corporate reorganizations. The proposed regulations are to be issued under the authority in Code section 7805 (68A Stat. 917, 26 U.S.C. 7805).

Recent developments involving the availability of tax-free reorganization treatment for certain mutual fund transactions require clarification, in general, of the continuity of business enterprise requirement. The mutual fund transactions typically involve a sale by a closely-held corporation of all of its assets and a transfer of the sale proceeds to a mutual fund for stock.

Assumptions Underlying Tax-Free Reorganizations

A tax-free reorganization assumes that "The new enterprise, the new corporate structure, and the new property are substantially continuations of the old [ones] still unliquidated." Treas. Reg. § 1.1002–1(c). The continuity of business enterprise requirement is fundamental to the notion that tax-free reorganizations effect only a readjustment of continuing interests in property under modified corporate forms. *See,* § 1.368–1(b).

The proposed regulations set forth certain basic concepts underlying the

continuity of business enterprise requirement. Continuity of business enterprise requires that the transferee either continue the transferor's historic business or use a significant portion of the transferor's historic business assets. The transferee is not required to continue the transferor's business. However, if that business is not continued, there must be significant use of the transferor's historic business assets in the transferee's business.

The facts of the examples in the proposed regulations are based, in large part, upon administrative rulings and judicial opinions. Example (1) shows that continuity of business enterprise requires only that the transferree continue one of the significant lines of the transferor's business. Example (2) shows that continuity of business enterprise may exist even if the transferee's use of the transferor's assets differs from the transferor's use of those assets.

Example (3) shows that stocks and bonds acquired following the sale of a corporation's historic business as part of an overall plan intended to result in a reorganization are not historic business assets. *Compare, Lester J. Workman,* T.C. Memo 1977–378.

The facts in example (4) are a variation of those in Rev. Rul. 63–29, 1963–1, C.B. 77, although the example reaches a different result. Example (5) shows that a disposition of the transferor's assets by the transferee does not differ in result from a disposition of those assets by the transferor.

If the proposed regulation is adopted, the Service will resolve on a case-by-case basis the portion of a transferor's total assets considered to be "significant" for purposes of issuing advance letter rulings.

Related Legislative History

The continuity of business enterprise requirement described in the proposed regulation is closely related to the separate requirement of continuity of interest. While continuity of business enterprise is determined at the corporate level and continuity of interest is determined at the shareholder level, both are fundamental to the underlying assumption that a tax-free reorganization effects only a readjustment of continuing interests under modified corporate forms.

The continuity of interest requirement ensures that the shareholders of the transferor retain a continuing interest in the corporate assets or business through ownership of a proprietary interest in the transferee corporation. *See, Pinellas Ice and Cold Storage Co.* v. *Commissioner,* 287 U.S. 462 (1933), and *Southwest Natural Gas Co.* v. *Commissioner,* 189 F.2d 332 (2d Cir.), *cert. denied,* 342 U.S. 860 (1951). *United States* v. *Groman,* 302 U.S. 82 (1937), and the *United States* v. *Bashford,* 302 U.S. 454 (1938), held that the shareholder's continuing interest was too indirect where the transferor's historic business was ultimately conveyed to a subsidiary (even a wholly-owned subsidiary) of the transferee corporation.

Although the specific result in *Bashford* involving the continuity of interest requirement has been modified by statute (see section 368(a)(2)(C)), it remains true that a corporation may not acquire assets in a tax-free reorganization with the intention of "transferring them to a stranger." See the Ways and Means Committee Report on the Internal Revenue Code of 1954, H. Rep. No. 1337, 83d Cong., 2d Sess. A134 (1954). It makes no difference which party to a reorganization transfers the assets to a stranger. The continuing relationship between assets and shareholders is broken in either case. Thus, the committee report language is also directly related to the policy underlying the continuity of business enterprise requirement.

Effective Date

The proposed regulation relating to the continuity of business enterprise requirement will apply prospectively only to allow the public to comment and request a hearing. It will be effective for transactions that occur 30 days or more after it is adopted as a Treasury decision. No inferences are intended regarding the law prior to the effective date of the proposed regulation.

Related Documents

Shortly after publication of the proposed regulation, the Internal Revenue Service will publish three documents in the Internal Revenue Bulletin. First, a Revenue Ruling will hold that a mere purchase is not a reorganization. Second, Rev. Rul. 63–29 will be suspended pending revision. Third, the Service's list of no ruling areas contained in Rev. Proc. 79–14, 1979–1 C.B. 496, will be amended to include transactions that violate the continuity of business enterprise requirement as set forth in the proposed regulation.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of this regulation is Richard L. Mull of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the regulation.—Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.368 [Removed]

Paragraph 1. Section 1.368 is deleted.

Par. 2. § 1.368–1 is amended as follows:

1. "The continuity of business enterprise requirement is described in paragraph (d) of this section." is added immediately following the third sentence in paragraph (b).

2. A new paragraph (d) is added to read as set forth below:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(d) *Continuity of business enterprise*—(1) *Effective date.* This paragraph (d) applies to transfers occurring after 30 days after date this regulation is published as a Treasury Decision in the Federal Register.

To determine the date of transfer, see § 1.381(b)–1(b).

(2) *General rule.* Continuity of business enterprise requires that the transferee either (i) continue the transferor's historic business or (ii) use a significant portion of the transferor's historic business assets in a business.

(3) *Business continuity.* (i) The continuity of business enterprise requirement is satisfied if the transferee continues the transferor's historic business. The fact the transferee is in the same line of business as the transferor tends to establish the requisite continuity, but is not alone sufficient.

(ii) If the transferor has more than one line of business, continuity of business enterprise requires only that the transferee continue a significant line of business.

(iii) In general, a corporation's historic business is the business it has conducted most recently. However, a

corporation's historic business is not one the corporation enters into as part of an overall plan intended to result in a reorganization. All facts and circumstances are considered in determining the existence of a plan.

(4) *Asset continuity.* (i) The continuity of business enterprise requirement is satisfied if the transferee uses a significant portion of the transferor's historic business assets in a business.

(ii) A corporation's historic business assets are the assets used in its historic business. Business assets include intangible operating assets such as good will, patents, and trademarks, whether or not they have a tax basis.

(5) *Examples.* The following examples illustrate this paragraph (d).

Example (1). Corporation P conducts three lines of business: manufacture of synthetic resins, manufacture of chemicals for the textile industry, and distribution of chemicals. The three lines of business are approximately equal in value. On July 1, 1981, P sells the synthetic resin and chemical distribution businesses to a third party for cash and marketable securities. On December 31, 1981, P transfers all of its assets to corporation Q solely for Q voting stock. Q continues the chemical manufacturing business without interruption. The continuity of business enterprise requirement is met. Continuity of business enterprise requires only that Q continue one of P's three significant lines of business.

Example (2). Corporation R manufactures computers and corporation S manufactures components for computers. S sells all of its output to R. On January 1, 1981, R decides to buy imported components only. On March 1, 1981, S merges into R. R continues buying imported components but retains S's equipment as a backup source of supply. The use of the equipment as a backup source of supply constitutes use of a significant portion of the transferor's historic business assets, thus, establishing continuity of business enterprise. R is not required to continue S's business.

Example (3). Corporation T is a manufacturer of boys' and men's trousers. On January 1, 1977, as part of an overall plan intended to result in a reorganization, T sold all of its assets to a third party for cash and purchased a highly diversified portfolio of stocks and bonds. On July 1, 1980, T transfers all of its assets to U, a regulated investment company, solely in exchange for U voting stock. The continuity of business enterprise requirement is not met. P's investment activity is not its historic business, and the stocks and bonds are not T's historic business assets.

Example (4). Corporation V manufactures children's toys and corporation W distributes steel and allied products. On January 1, 1981, V sells all of its assets to a third party for $100,000 cash and $900,000 in notes. On March 1, 1981, V merges into W. Continuity of business enterprise is lacking. The use of the sales proceeds in W's business is not sufficient.

Example (5). Corporation X manufactures farm machinery and corporation Y operates a lumber mill. X merges into Y. Immediately after the merger, Y disposes of X's assets. Y does not continue X's farm machinery manufacturing business. Continuity of business enterprise is lacking.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-39594 Filed 12-27-79; 8:45 am]

BILLING CODE 4830-01-M

[26 CFR Part 1]

[LR-52-79]

Discharge of Liabilities on the Sale or Other Disposition of Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the computation under section 1001 of the Internal Revenue Code of 1954 of the amount realized on the sale or other disposition of encumbered property. The proposed regulations would clarify existing regulations. The regulations would provide the public with guidance needed to comply with the Internal Revenue laws and would affect taxpayers who sell or transfer property subject to liabilities.

DATES: Written comments and request for a public hearing must be delivered or mailed by February 25, 1980. The amendments are proposed to be effective for taxable years beginning after December 31, 1953.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, [LR-52-79] Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John H. Parcell of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3288).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1001 of the Internal Revenue Code of 1954. These amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Additional Information

These proposed regulations, when finalized, will clarify existing regulations with respect to the effect on amount realized of liabilities to which transferred property is subject. These regulations would not represent a change or modification of the Treasury Department's position with respect to the issues addressed. These proposed regulations would clarify existing regulations in order to set forth more precisely what has been the Internal Revenue Service's consistent ruling and litigating position for many years.

The proposed regulations provide that upon the sale or other disposition of property, the transferor's amount realized for purposes of computing gain or loss includes the amount of any liability from which the transferor is discharged, or treated as discharged, as a result of the sale or other disposition. For example, a sale or other disposition subject to a nonrecourse liability is treated as discharging the transferor from the liability. See *Crane* v. *Commissioner*, 331 U.S. 1 (1947). The proposed regulations also provide that if the transferor of encumbered property is also personally liable for the debt which the property secures and if the transferee agrees to pay the debt, the transferor's debt is treated as discharged. For these purposes, the disposition of encumbered property includes, for example, gifts of the property and transfers to creditors in satisfaction of the outstanding liability.

Finally, the proposed regulations provide that even if the fair market value of the property is less than the amount of the liabilities it secures, the full amount of those liabilities is treated as money received from the sale or other disposition of property. This rule reflects decisions in cases such as *Millar* v. *Commissioner*, 577 F.2d 212 (3d Cir. 1978), and *John F. Tufts*, 70 T.C. 756 (1978).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspections and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is David Jacobson of the Legislation and Regulations Division of the Office of Chief Counsel,

Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The following section is inserted immediately after § 1.1001–1.

§ 1.1001–2 Discharge of liabilities.

(a) *Inclusion in amount realized.* For the purposes of determining the amount realized from a sale or other disposition of property, the amount of liabilities from which the transferor is discharged, or treated as discharged, as a result of the sale or other disposition shall be treated as an amount realized. For example, the sale or other disposition of property subject to nonrecourse liabilities shall be treated as discharging the transferor from the liabilities. Likewise, the transferor shall be treated as discharged from recourse liability if, by reason of the sale or other disposition of property subject to the liability, another person agrees to pay the liability. Further, for purposes of this section, a disposition of property includes a gift of the property or its transfer to creditors in satisfaction of liabilities to which it is subject.

(b) *Effect of fair market value of security.* The fair market value of the security which is sold or disposed of is not relevant for purposes of determining under paragraph (a) of this section the amount of liabilities from which the taxpayer is discharged or treated as discharged. Thus, the fact that the fair market value of the property is less than the amount of the liabilities it secures does not prevent the full amount of those liabilities from being treated as money received from the sale or other disposition of the property.

(c) *Examples.* The provisions of this section may be illustrated by the following examples. In each example assume the taxpayer uses the cash receipts and disbursements method of accounting, makes a return on the basis of the calendar year, and sells or disposes of all property which is security for a given liability.

Example (1). In 1976 A purchases an asset for $10,000. A pays the seller $1,000 in cash and signs a note payable to the seller for $9,000. A is personally liable for repayment with the seller having full recourse in the event of default. In addition, the asset which was purchased is pledged as security. During the years 1976 and 1977, A takes depreciation deductions on the asset in the amount of $3,100. During this same time period A reduces the outstanding principal on the note to $7,600. At the beginning of 1978 A sells the asset. The buyer pays A $1,600 in cash and assumes personal liability for the $7,600 outstanding liability. A becomes secondarily liable for repayment of the liability. A's amount realized is $9,200 ($1,600 + $7,600). Since A's adjusted basis in the asset is $6,900 ($10,000 – $3,100) A realizes a gain of $2,300 ($9,200 – $6,900).

Example (2). Assume the same facts as in example (1) except that A is not personally liable on the $9,000 note given to the seller and in the event of default the seller's only recourse is to the asset. In addition, on the sale of the asset by A, the purchaser takes the asset subject to the liability. Nevertheless, A's amount realized is $9,200 and A's gain realized is $2,300 on the sale.

Example (3). In 1975 L becomes a limited partner in partnership GL. L contributes $10,000 in cash to GL and L's distributive share of partnership income and loss is 10 percent. L is not entitled to receive any guaranteed payments. In 1978 M purchases L's entire interest in partnership GL. At the time of the sale L's adjusted basis in the partnership interest is $20,000. At that time L's proportionate share of liabilities, of which no partner has assumed personal liability, is $15,000. M pays $10,000 in cash for L's interest in the partnership. L's share of partnership liabilities, $15,000, is treated as money received. Accordingly, L's amount realized on the sale of the partnership interest is $25,000 ($10,000 + $15,000). L's gain realized on the sale is $5,000 ($25,000 – $20,000).

Example (4). In 1976 B becomes a limited partner in partnership BG. In 1978 B contributes B's entire interest in BG to a charitable organization described in section 170(c). At the time of the contribution all of the partnership liabilities are liabilities for which neither B nor G has assumed any personal liability and B's proportionate share of which is $9,000. The charitable organization does not pay any cash or other property to B, but takes the partnership interest subject to the $9,000 of liabilities. Assume that the contribution is treated as a bargain sale to a charitable organization and that under section 1011(b) $3,000 is determined to be the portion of B's basis in the partnership interest allocable to the sale. The $9,000 of liabilities is treated by B as money received, thereby making B's amount realized $9,000. B's gain realized is $6,000 ($9,000 – $3,000).

Example (5). In 1975 C, an individual, creates T, an irrevocable trust. Due to certain powers expressly retained by C, T is a "grantor trust" for purposes of subpart E of part 1 of subchapter J of the Code and therefore C is treated as the owner of the entire trust. T purchases an interest in P, a partnership. C, as owner of T, deducts the distributive share of partnership losses attributable to the partnership interest held by T. In 1978, when the adjusted basis of the partnership interest held by T is $1,200, C renounces the powers previously and expressly retained that initially resulted in T being classified as a grantor trust. Consequently, T ceases to be a grantor trust and C is no longer considered to be the owner of the trust. At the time of the renunciation all of P's liabilities are liabilities on which none of the partners have assumed any personal liability and the proportionate share of which of the interest held by T is $11,000. Since prior to the renunciation C was the owner of the entire trust, C was considered the owner of all the trust property for Federal income tax purposes, including the partnership interest. Since C was considered to be the owner of the partnership interest, C not T, was considered to be the partner in P during the time T was a "grantor trust". However, at the time C renounced the powers that gave rise to T's classification as a grantor trust, T no longer qualified as a grantor trust with the result that C was no longer considered to be the owner of the trust and trust property for Federal income tax purposes. Consequently, at that time, C is considered to have transferred ownership of the interest in P to T, now a separate taxable entity, independent of its grantor C. On the transfer, C's share of partnership liabilities ($11,000) is treated as money received. Accordingly, C's amount realized is $11,000 and C's gain realized is $9,800 ($11,000–$1,200).

Example (6). In 1977 D purchases an asset for $7,500. D pays the seller $1,500 in cash and signs a note payable to the seller for $6,000. D is not personally liable for repayment but pledges as security the newly purchased asset. In the event of default, the seller's only recourse is to the asset. During the years 1977 and 1978 D takes depreciation deductions on the asset totaling $4,200 thereby reducing D's basis in the asset to $3,300 ($7,500–$4,200). In 1979 D transfers the asset to a trust which is not a "grantor trust" for purposes of subpart E of part 1 of subchapter J of the Code. Therefore D is not treated as the owner of the trust. The trust takes the asset subject to the liability and in addition pays D $750 in cash. Prior to the transfer D had reduced the amount outstanding on the liability to $4,700. D's amount realized on the transfer is $5,450 ($4,700+$750). Since D's adjusted basis is $3,300, D's gain realized is $2,150 ($5,450–$3,300).

Example (7). In 1974 E purchases a herd of cattle for breeding purposes. The purchase price is $20,000 consisting of $1,000 cash and a $19,000 note. E is not personally liable for repayment of the liability and the seller's only recourse in the event of default is to the herd of cattle. In 1977 E transfers the herd back to the original seller thereby satisfying the indebtedness pursuant to a provision in the original sales agreement. At the time of the transfer the fair market value of the herd is $15,000 and the remaining principal balance on the note is $19,000. At that time E's adjusted basis in the herd is $16,500 due to a deductible loss incurred when a portion of the herd died as a result of disease. As a result of the indebtedness being satisfied, E's amount realized is $19,000 notwithstanding the fact that the fair market value of the herd was less than $19,000. E's realized gain is $2,500 ($19,000–$16,500).

Par. 2. Section 1.61–12 is amended by adding at the end thereof the following new paragraph:

§ 1.61-12 Income from discharge of indebtedness.

* * * * *

(e) *Cross reference.* For rules relating to the treatment of liabilities on the sale or other disposition of encumbered property, see § 1.1001-2.

Par. 3. Section 1.671-1 is amended by adding at the end thereof the following new paragraph:

§ 1.671-1 Grantors and others treated as substantial owners; scope.

* * * * *

(f) For rules relating to the treatment of liabilities resulting on the sale or other disposition of encumbered trust property due to a renunciation of powers by the grantor or other owner, see § 1.1001-2.

Par. 4. Section 1.741-1 is amended by adding at the end thereof the following new paragraph:

§ 1.741-1 Recognition and character of gain or loss on sale or exchange.

* * * * *

(d) For rules relating to the treatment of liabilities on the sale or exchange of interests in a partnership see §§ 1.752-1 and 1.1001-2.

§ 1.1001 [Removed]

Par. 5. Section 1.1001 is deleted.

Par. 6. Section 1.1011-2 is amended by adding at the end thereof the following new paragraph:

§ 1.1011-2 Bargain sale to a charitable organization.

* * * * *

(e) *Cross reference.* For rules relating to the treatment of liabilities in a bargain sale transaction, see § 1.1001-2.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-39554 Filed 12-27-79; 8:45 am]

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26 CFR Parts 1 and 5

[LR-199-78]

Credit for Employment of Certain New Employees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the credit for employment of individuals qualifying as members of a targeted group. Changes to the applicable tax law were made by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with the Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 25, 1980.

The amendments are proposed to be effective for certain wages paid or incurred after December 31, 1978, and before January 1, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-199-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3346).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 44B, 51, 52, 53, 280C and 381 of the Internal Revenue Code of 1954. This document also contains proposed amendments to the Temporary Income Tax Regulations Under the Revenue Act of 1978 (26 CFR Part 5) under sections 44B and 51 of the Internal Revenue Code of 1954. Generally these amendments are proposed to conform the regulations to section 321 of the Revenue Act of 1978 (92 Stat. 2830) and are to be issued under the authority contained in sections 44B and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2834, 26 U.S.C. 44B; 68A Stat. 917, 26 U.S.C. 7805). The amendments to the regulations under section 381 are proposed to conform the regulations to section 202(d)(3)(A) of the Tax Reduction and Simplification Act of 1977 (91 Stat. 148).

In General

Section 321 of the Revenue Act of 1978 provides a targeted jobs credit for the employment of individuals qualifying as members of a targeted group. The targeted jobs credit replaces the new jobs credit allowable under section 44B (as in effect prior to enactment of the Revenue Act of 1978). In general, a taxpayer may elect to claim a credit under section 44B (as amended by the Revenue Act of 1978) for amounts paid or incurred after December 31, 1978, for taxable years ending after that date, to members of a targeted group. Generally, to qualify for the credit, the amounts must be paid or incurred to members of a targeted group first hired after September 26, 1978. However, amounts paid or incurred after December 31, 1978, to a vocational rehabilitation referral hired before September 27, 1978, may qualify for the credit if a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) was claimed for the individual by the taxpayer for a taxable year beginning before January 1, 1979.

Amount of Credit

The amount of the credit allowable by section 44B for the taxable year is 50 percent of the qualified first-year wages plus 25 percent of the qualified second-year wages. Generally, qualified first-year wages are the first $6,000 of wages paid or incurred by the employer during the taxable year to an individual who is a member of a targeted group for services rendered during the 1-year period beginning with the day the individual begins work for the employer. Qualified second-year wages are the first $6,000 of wages paid or incurred by the employer during the taxable year to an individual who is a member of a targeted group for services rendered during the 1-year period beginning on the day after the last day of the qualified first-year wages period. Qualified first-year wages are further limited to 30 percent of the aggregate unemployment insurance wages paid by the employer during the calendar year ending in such taxable year. The amount of the credit may not exceed 90 percent of the tax imposed by chapter 1 of the Code reduced by certain credits. However, in the case of a taxable year beginning before January 1, 1979, and ending after that date, the amount of the credit allowable is limited to 100 percent of the tax imposed by chapter 1 of the Code rather than 90 percent. Any unused credit may be carried back 3 years or over 7 years. In addition, the amount of the employer's income tax deduction for wages must be reduced by the amount of the credit.

Members of a Targeted Group

An individual is a member of a targeted group if he or she is certified as a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged Vietnam-era veteran, an SSI recipient, a general assistance recipient, a youth participating in a cooperative education program, or an economically disadvantaged ex-convict. In general, the State employment security agency is the agency responsible for certifying an individual as a member of a targeted group. In the case of youths participating in a qualified cooperative education program, the school offering the program must certify the individual as a member of that targeted group. A school may satisfy the certification requirement by using Form 6199. In either case, a certificate may be revoked if it is

discovered that the information supplied by the individual or employer for purposes of issuing the certificate was incorrect or false.

Trades or Businesses That are Under Common Control

In the case of a group of trades or businesses that are under common control at any time during the calendar year, all employees of the group of trades or businesses that are under common control are treated as employed by a single employer. The amount of the targeted jobs credit must be apportioned among the members of the group on the basis of each member's proportionate share of the wages giving rise to such credit.

Carryback and Carryover of Credit

Any unused targeted jobs credit may be carried back 3 years and over 7 years. An unused credit of a corporation which arises in an unused credit year for which the corporation is not an electing small business corporation and which is a carryback or carryover to a taxable year for which the corporation is an electing small business corporation shall not be added to the amount allowable as a credit under section 44B to the shareholders of that corporation for any taxable year.

Repeal of Rule for Pass-Through of Credit

Section 53 (b) as enacted by the Tax Reduction and Sumplification Act of 1977 limited the amount of the credit under section 44B that is passed through to a partner, a beneficiary of an estate or trust, or a shareholder of a subchapter S corporation to a proportionate part of the taxpayer's interest in the partnership, estate, trust, or subchapter S corporation. The Revenue Act of 1978 repealed section 53 (b) for amounts paid or incurred in taxable years beginning after December 31, 1978. Accordingly, section 53 (b) applies to any unused targeted jobs credit earned in taxable years beginning before December 31, 1978, and carried over to taxable years beginning after December 31, 1978.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Douglas W. Charnas of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of style and substance.

Proposed amendments to the regulations.—The proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations Under the Tax Reform Act of 1978 (26 CFR Part 5) are as follows:

Paragraph 1. There is inserted immediately after § 1.44–5 the following new section:

§ 1.44B–1 Credit for employment of certain new employees.

(a) *In general.* Under section 44B (as amended by the Revenue Act of 1978) a taxpayer may elect to claim a credit for wages (as defined in § 1.51–1(b)(4)) paid or incurred to members of a targeted group (as defined in § 1.51–1(c)(1)). Generally, to qualify for the credit, the wages must be paid or incurred to members of a targeted group first hired after September 26, 1978. However, wages paid or incurred to a vocational rehabilitation referral (as defined in section 51(d)(2)) hired before September 27, 1978, may qualify for the credit if a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) was claimed for the individual by the taxpayer for a taxable year beginning before January 1, 1979. The amount of the credit shall be determined under § 1.51–1. Section 280C (b) (relating to the requirement that the deduction for wages be reduced by the amount of the credit) and the regulations thereunder will not apply to taxpayers who do not elect to claim the credit.

(b) *Time and manner of making election.* The election provided for in section 44B (as amended by the Revenue Act of 1978) may be made by claiming the credit on an original return, or on an amended return, at anytime before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for the taxable year (determined without regard to extensions). The election may be revoked within the above-described 3-year period by filing an amended return on which the credit is not claimed.

(c) *Election by partnership, electing small business corporation, and members of a controlled group.* In the case of a partnership, the election shall be made by the partnership. In the case of an electing small business corporation (as defined in section 1371(a)), the election shall be made by the corporation. In the case of a controlled group of corporations (within the meaning of section 52(a) and the regulations issued thereunder) not filing a consolidated return under section 1501, the election shall be made by each member of the group. In the case of an affiliated group filing a consolidated return under section 1501, the election shall be made by the group.

§§ 1.51 and 1.51–1 [Removed]

Par. 2. Sections 1.51 and 1.51–1 are deleted.

Par. 3. There are inserted immediately after § 1.50B–1 the following new sections:

§ 1.51–1 Amount of credit.

(a) *Determination of amount.* The amount of the targeted jobs credit allowable by section 44B (as amended by the Revenue Act of 1978) for the taxable year equals 50 percent of the qualified first-year wages plus 25 percent of the qualified second-year wages. See § 1.53–1 for rules limiting the amount of the credit to a percentage of the amount of the tax imposed by chapter 1 of the Code.

(b) *Definitions*—(1) *Qualified wages.* The term "qualified wages" means wages (as defined in paragraph (b)(4)) paid or incurred by the employer during the taxable year to individuals who are members of a targeted group (within the meaning of section 51(d)).

(2) *Qualified first-year wages.* The term "qualified first-year wages" means wages (as defined in paragraph (b)(4)) attributable to services rendered by a member of a targeted group during the 1-year period beginning with the day the individual first begins work for the employer (or, in the case of a vocational rehabilitation referral, the day the individual begins work for the employer on or after the beginning of such individual's rehabilitation plan). However, with the exception of vocational rehabilitation referrals (as defined in section 51(d)(2)) for whom the employer claimed a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) for a taxable year beginning before January 1, 1979, members of a targeted group who are first hired after September 26, 1978, and before January 1, 1979, will be treated as if they first began work for the employer on January 1, 1979. The date on which

the wages are paid does not determine whether the wages are first-year wages; rather, the wages must be attributable to the period during which the work was performed.

(3) *Qualified second-year wages.* The term "qualified second-year wages" means wages attributable to services rendered by a member of a targeted group during the 1-year period beginning on the day after the last day of the period for qualified first-year wages. The date on which the wages are paid does not determine whether the wages are second-year wages; rather, the wages must be attributable to the period during which the work was performed.

(4) *Wages.* The term "wages" shall only include amounts paid or incurred after December 31, 1978, and before January 1, 1981, for taxable years ending after December 31, 1978. For purposes of this section, the term "wages" has the meaning given to such term by section 3306(b) (determined without regard to any dollar limitation contained in such subsection). In the case of agricultural labor or railway labor, the term "wages" means unemployment insurance wages within the meaning of subparagraph (A) or (B) of section 51(h)(1). The term "wages" shall not include any amounts paid or incurred by an employer for any pay period to any individual for whom the employer receives federally funded payments for on-the-job training for such individual for such pay period. In addition, the term "wages" shall not include any amount paid or incurred by the employer to an individual with respect to whom the employer claims a credit under section 40 (relating to expenses of work incentive programs). In the case of youths participating in a qualified cooperative education program, the term "wages" shall include only those amounts paid or incurred by the employer that are attributable to services rendered by the individual while he or she meets the conditions specified in section 51(d)(8)(A).

(c) *Members of targeted groups*—(1) *In general.* An individual is a member of a targeted group if the individual is certified as (i) a vocational rehabilitation referral, (ii) an economically disadvantaged youth, (iii) an economically disadvantaged Vietnam-era veteran, (iv) an SSI recipient, (v) a general assistance recipient, (vi) a youth participating in a cooperative education program, or (vii) an economically disadvantaged ex-convict. Except where provided below, see section 51(d) for a definition of these groups. With the exception of individuals who are youths participating in a qualified cooperative education program, the local offices of the State employment security agencies are responsible for certifying individuals as members of a targeted group.

(2) *Youths participating in a qualified cooperative education program.* For an individual to qualify as a "youth participating in a qualified cooperative education program" under section 51(d)(8), the individual must be certified in writing by the qualified school (as defined in section 51(d)(8)(C)) participating in the program as meeting the conditions specified in section 51(d)(8)(A). The school may satisfy the certification requirement by using Form 6199. For purposes of section 51(d)(8)(B) relating to the definition of a "qualified cooperative education program", the term "program of vocational education" means an organized educational program which is directly related to the preparation of individuals for employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. An "organized education program" means only instructions related to the occupation or occupations for which the students are in training.

(3) *General assistance recipients.* In order for an individual to qualify as a general assistance recipient, the individual must receive assistance for a period of not less than 30 days ending within the preemployment period (as defined in section 51(d)(10)) from the qualified general assistance program. A qualified general assistance program is a program of a State or a political subdivision of a State that the Secretary has designated as providing general assistance (or similar assistance) which is based on need and consists of money payments. For purposes of this subparagraph, the term "money" means cash or an instrument convertible into cash (*e.g.*, a check).

(4) *Effect of certification.* The certificate may be revoked if it is discovered that the information supplied by the individual or employer for purposes of issuing the certificate was false or incorrect. The employer may not claim a credit for wages paid or incurred to an individual for services rendered after the certificate has been revoked. However, the employer is entitled to a credit for wages paid or incurred attributable to services rendered prior to the revocation.

(d) *Limitations*—(1) *Wage limitation per employee.* The amount of the qualified first-year wages, and the amount of the qualified second-year wages, which may be taken into account for purposes of the credit may not exceed $6,000 per year for each employee.

(2) *Limitation on qualified first-year wages.* The amount of the qualified first-year wages which may be taken into account for purposes of the targeted jobs credit for any taxable year shall not exceed 30 percent of the aggregate unemployment insurance wages paid by the employer during the calendar year ending in such taxable year. In the case of a group of trades or businesses under common control (as defined in section 1.52–1(b)), the qualified first-year wages cannot exceed 30 percent of the aggregate unemployment insurance wages paid to all employees of that group of trades or businesses under common control during the calendar year ending in such taxable year. For this purpose, the term "unemployment insurance wages" has the same meaning given to the term "wages" as defined in section 3306(b). In the case of agricultural or railway labor, see section 51(h)(1) for the applicable definition of unemployment insurance wages.

(3) *Remuneration must be for trade or business employment.* Remuneration paid by an employer to an employee during any taxable year shall be taken into account only if more than one-half of the remuneration paid by the employer to an employee is for services in the employer's trade or business. This determination shall be made by each employer without regard to section 52 (a) or (b). Accordingly, employees of corporations that are members of a controlled group or all employees of partnerships, proprietorships, and other trades or businesses (whether or not incorporated) which are under common control will be treated as being employed by each separate employer for this purpose. For this purpose, the term "year" means the taxable year of the employer.

(e) *Examples.* The application of this section may be illustrated by the following examples in each of which it is assumed that the limitations imposed by sections 1.51–1(d)(2) and 1.53–1 are inapplicable:

Example (1). Corporation M is a calendar year, cash receipts and disbursements method taxpayer. A, an economically disadvantaged youth, first began work for Corporation M on October 1, 1978. Qualified first-year wages with respect to A are wages attributable to the period beginning on January 1, 1979 (since A was first hired after September 26, 1978, he is treated as having begun work on January 1, 1979), and ending on December 31, 1979. In the 1979 taxable year, Corporation M pays A $5,000 of qualified first-year wages attributable to services performed in 1979. Corporation M's allowable credit is equal to $2,500 (50 percent of $5,000).

Example (2). Assume the same facts as in example (1) except that in 1980 Corporation

M pays to A $100 of wages attributable to services rendered in 1979. These wages will still be considered as qualified first-year wages, but the credit may not be claimed until the 1980 taxable year.

Example (3). Assume the same facts as in example (1) with these additional facts. In 1980, Corporation M pays to A qualified second-year wages of $5,900 attributable to services performed by A in 1980. In 1981, Corporation M pays to A qualified second-year wages of $100 attributable to services performed by A in 1980. Since, for purposes of the credit, wages do not include any amounts paid after 1980 in the case of a cash receipts and disbursements method taxpayer, Corporation M may not claim a credit on the wages paid to A in 1981.

Example (4). Corporation N is a calendar year, cash receipts and disbursements method taxpayer. B, a vocational rehabilitation referral, first began work for Corporation N on July 1, 1978. Corporation N claimed a credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978) for $3,000 of wages paid to B in the 1978 taxable year. Corporation N paid B $6,000 for services rendered from January 1, 1979, to June 30, 1979. The period during which qualified first-year wages are determined begins on July 1, 1978, and ends on June 30, 1979. Amounts paid before January 1, 1979, however, are not taken into consideration for determining the amount of qualified first-year wages. Accordingly, only the wages attributable to services performed from January 1, 1979, through June 30, 1979, may be considered as qualified first-year wages. Corporation N, therefore, may claim a credit on $6,000 of qualified first-year wages.

Example (5). C, an economically disadvantaged youth, first began work for Corporation O, a calendar year, cash receipts and disbursements method taxpayer, on January 1, 1979. On August 1, 1979, C was laid off by Corporation O and began work for Corporation P, which is unrelated to Corporation O, on August 2, 1979. On December 1, 1979, C again began work for Corporation O and continued working for Corporation O until February 1, 1981. At the time C began work of Corporation P, C no longer met the qualifications of an economically disadvantaged youth because C's income during the time he worked for Corporation O was not less than 70 percent of the Bureau of Labor Statistics lower living standard. Corporation P may not claim a credit for wages paid to C since C was not a member of a targeted group when he was first hired by Corporation O. Corporation O may claim a credit for qualified first-year wages paid for services rendered by C from January 1, 1979, to August 1, 1979, and from December 1, 1979 to December 31, 1979. Corporation O may claim a credit for qualified second-year wages paid for services rendered by C from January 1, 1980, to December 31, 1980.

Example (6). Corporation Q is a calendar year, cash receipts and disbursements method taxpayer. D, a member of a targeted group, first began work for Corporation Q on January 1, 1979. For the pay periods from January 1, 1979, to March 31, 1979, Corporation Q received federally funded payments for on-the-job training for D and paid wages of $2,000 to D. During the remainder of 1979 Corporation Q paid wages of $7,000 to D. Corporation Q may claim a credit on $6,000 of qualified first-year wages. Amounts paid to D by Corporation Q during the pay periods for which Corporation Q received federally funded payments for on-the-job training for D are not considered wages for purposes of the credit. However, Corporation Q may consider $6,000 of the total $7,000 of wages paid after March 31, 1979, as qualified first-year wages.

Example (7). Corporation R is a calendar year, cash receipts and disbursements method taxpayer. E, a youth participating in a qualified cooperative education program first began work for Corporation R on September 30, 1979. E meets the conditions specified in section 51(d)(8)(A) until June 10, 1980, when E's enrollment in the cooperative education program ends because the school offering the program closes for summer vacation. During the period of September 30, 1979, to June 10, 1980, Corporation R paid E qualified first-year wages of $5,000. E continues to work for Corporation R during the summer vacation from June 11, 1980, to September 8, 1980, for which Corporation R pays E $2,000 in wages. These are not qualified first-year wages and do not count for purposes of the credit or the $6,000 per year wage limitation since E no longer meets all the conditions specified in section 51(d)(8)(A). On September 9, 1980, the school offering the program opens and E again participates in a qualified cooperative education program and meets the conditions specified in section 51(d)(8)(A). Corporation R pays $1,500 to E for services rendered during the period from September 9, 1980 to September 29, 1980. With respect to these wages, Corporation R may claim a credit on an additional $1,000 of qualified first-year wages ($6,000 maximum qualified first-year wages less $5,000 qualified first-year wages attributable to services rendered from September 30, 1979, to June 10, 1980) paid to E before September 30, 1980.

Example (8). Corporation S is a cash receipts and disbursements method taxpayer with a July 1 through June 30 taxable year. In the 1979–1980 taxable year the aggregate unemployment insurance wages paid by S were $150,000. In calendar year 1979 the aggregate unemployment insurance wages paid by Corporation S were $110,000. Corporation S' qualified first-year wages are limited to 30 percent of the aggregate unemployment insurance wages paid by it in calendar year 1979 or $33,000 (30 percent of $110,000), even though the aggregate unemployment insurance wages paid by it in the 1979–1980 taxable year were $150,000.

Example (9). Corporation T began business on December 1, 1978, and elected to use a December 1 through November 30 taxable year. All of Corporation T's employees began work on December 1, 1978. In December 1978, the aggregate unemployment insurance wages paid by Corporation T were $10,000. From January 1, 1979, to November 30, 1979, the aggregate unemployment insurance wages paid by Corporation T were $110,000. Corporation T's qualified first-year wages are limited to 30 percent of the aggregate unemployment insurance wages paid by it in 1978 or $3,000 (30 percent of $10,000) even though the aggregate unemployment insurance wages paid by it in the 1978–1979 taxable year were $120,000.

Example (10). G, a sole proprietor, is a calendar year, cash receipts and disbursements method taxpayer. H and I, both members of a targeted group, first began work for G on January 1, 1979. G paid H total qualified first-year wages of $6,000 in 1979. Three thousand one hundred dollars of those wages were for services in G's trade or business, and $2,900 of those wages were not for services in G's trade or business. G paid I total qualified first-year wages of $6,000 in 1979. Three thousand dollars of those wages were for services in G's trade or business, and $3,000 of those wages were not for services in G's trade or business. G has an allowable credit of $3,000 in 1979 on all $6,000 of qualified first-year wages paid to H because more than one-half of the remuneration paid by G to H was for services in G's trade or business. G may not take into account the wages paid to I because not more than one-half of the remuneration paid by G to I was for services in G's trade or business. Accordingly, G may not claim a credit on wages paid to I.

Par. 4. Section 1.52–1 is amended by revising paragraph (a) to read as follows:

§ 1.52–1 Trades or businesses that are under common control.

(a) *Apportionment of jobs credit among members of a group of trades or businesses that are under common control*—(1) *Targeted jobs credit.* (i) In the case of a group of trades or businesses that are under common control (within the meaning of paragraph (b) of this section) at any time during the calendar year, the amount of the targeted jobs credit (computed under section 51 as if all the organizations that are under common control are one trade or business) under section 44B (as amended by the Revenue Act of 1978) must be apportioned among the members of the group on the basis of each member's proportionate share of the wages giving rise to such credit. If the group of trades or businesses that are under common control have different taxable years, the credit shall be computed as if all the organizations have the same taxable year as the organization for which a determination of the proportionate share of the credit is being made. The amount of the qualified first-year wages cannot exceed 30 percent of the aggregate unemployment insurance wages paid by the group of trades or businesses under common control during the calendar year ending in the taxable year of the organization for which a determination of the proportionate share of the credit is being made. The limitations in section 53 (as amended by the Revenue Act of

1978) and the regulations thereunder apply to each organization individually (although, in applying these limitations, an affiliated group of corporations electing to make a consolidated return shall be treated as one organization).

(ii) The application of the subparagraph may be illustrated by the following examples:

Example (1). (a) Corporation M and its three subsidiaries, Corporations N, O, and P, are a group of businesses that are under common control and each uses the cash receipts and disbursements method of accounting and has a calendar year taxable year. Corporations M, N, O, and P paid out the following amounts in unemployment insurance wages, qualified first-year wages and qualified second-year wages during 1980:

	Unemployment insurance wages	Qualified 1st-year wages	Qualified 2d-year wages
Corporation:			
M	$600,000	$184,000	$75,000
N	300,000	85,000	90,000
O	360,000	120,000	115,000
P	24,000	24,000	0
Total	1,284,000	413,000	280,000

(b) Since Corporations M, N, O, and P are under common control, the amount of qualified first-year wages paid by the group is limited to 30 percent of the aggregate unemployment insurance wages paid by the group in the calendar year ending in the group's taxable year. Since the qualified first-year wages of $413,000 exceeds 30% of the aggregate unemployment insurance wages, the group is limited to qualified first-year wages of $385,200 (30% of $1,284,000). The amount of the targeted jobs credit attributable to qualified first-year wages is equal to $192,600 (50% of $385,200). The amount of the credit attributable to qualified second-year wages is equal to $70,000 (25% of $280,000).

(c) The credit is apportioned among Corporations M, N, O, and P on the basis of their proportionate share of the qualified first-year wages or qualified second-year wages giving rise to the credit. Each corporation's share of the credit attributable to qualified first-year wages would be computed as follows:

Corporation:			Amount of credit
M	$192,600 ×	$184,000 / $413,000	= $85,807.26
N	$192,600 ×	$85,000 / $413,000	= $39,639.23
O	$192,600 ×	$120,000 / $413,000	= $55,951.26
P	$192,600 ×	$24,000 / $413,000	= $11,192.25

Each corporation's share of the credit attributable to qualified second-year wages is computed as follows:

Corporation:			Amount of credit
M	$70,000 ×	$75,000 / $280,000	= $18,750
N	$70,000 ×	$90,000 / $280,000	= $22,500
O	$70,000 ×	$115,000 / $280,000	= $28,750
P	$70,000 ×	0 / $280,000	= 0

Example (2). Assume the facts in example (1) with these additional facts. A, a member of a targeted group, worked for more than one of the members of the controlled group in the taxable year. A first began work for Corporation M on January 1, 1980, and later worked for Corporations N and O during 1980. For services rendered by A during 1980, the following wages were paid to A: Corporation M paid A $2,500 of qualified first-year wages; Corporation N paid A $1,500 of qualified first-year wages; Corporation O paid A $3,000 of qualified first-year wages. Corporations M, N, and O paid A a total of $7,000 of wages during 1980. Only $6,000 of qualified first-year wages per year per employee may be taken into account for purposes of the credit. See § 1.51-1(d)(1). Since Corporations M, N, and O are treated as a single employer under section 52(a), the maximum $6,000 of qualified first-year wages paid A by the group must be apportioned among Corporations M, N, and O as follows:

Corporation:			Qualified 1st year wages
M	$6,000 ×	$2,500 / $7,000	= $2,142.86
N	$6,000 ×	$1,500 / $7,000	= $1,285.71
O	$6,000 ×	$3,000 / $7,000	= $2,571.43

Example (3). (a) Corporation Q and its two subsidiaries, Corporations R and S, are a group of businesses that are under common control and each uses the cash receipts and disbursements method of accounting. Corporation Q has a calendar year taxable year. Corporation R has a July 1 through June 30 taxable year. Corporation S has an October 1 through September 30 taxable year. For purposes of determining Corporation R's proportionate share of the credit, the credit is computed as if Corporations Q and S have the same taxable year as Corporation R. Accordingly, Corporation R would compute its share of the credit for its 1979-1980 taxable year as set forth below.

	Unemployment insurance wages, 1979	Qualified wages paid from July 1, 1979, to June 30, 1980	
		1st year wages	2d year wages
Corporation:			
Q	$500,000	$150,000	$80,000
R	300,000	110,000	50,000
S	100,000	25,000	10,000
Total	900,000	285,000	140,000

(b) Since Corporations Q, R, and S are under common control, the amount of qualified first-year wages is limited to 30 percent of the aggregate unemployment insurance wages paid by the group during the calendar year ending in Corporation R's taxable year. Since the qualified first-year wages of $285,000 exceeds 30 percent of the aggregate unemployment insurance wages, the group is limited to qualified first-year wages of $270,000 (30% of $900,000). The amount of the targeted jobs credit attributable to qualified first-year wages paid by members of the group during the period of the taxpayer's taxable year is $135,000 (50% of $270,000). The amount of the credit attributable to qualified second-year wages paid or incurred by members of the group during the period of the taxpayer's taxable year is $35,000 (25% of $140,000).

(c) The credit is apportioned to Corporation R on the basis of its proportionate share of the qualified first-year wages and qualified second-year wages giving rise to the credit. Corporation R's share of the credit attributable to qualified first-year wages is $52,105.26

$$(\$135,000 \times \frac{\$110,000}{\$285,000}$$

Corporation R's share of the credit attributable to qualified second-year wages is $12,500

$$(\$35,000 \times \frac{\$50,000}{\$140,000}$$

Corporation R's share of the credit for its 1979-1980 taxable year is $64,605.26 ($52,105.26+12,500).

(2) *New jobs credit.* In the case of a group of trades or businesses that are under common control at any time during the calendar year, the amount of the new jobs credit (computed under section 51 as if all the organizations that are under common control are one trade or business) under section 44B (as in effect prior to enactment of the Revenue Act of 1978) must be apportioned among the members of the group on the basis of each member's proportionate contribution to the increase in unemployment insurance wages for the entire group. The limitations in section 53 (as in effect prior to enactment of the Revenue Act of 1978) and the regulations thereunder apply to each organization individually (although, in applying these limitations, an affiliated group of corporations electing to make a consolidated return shall be treated as one organization). The application of this subparagraph may be illustrated by the following example:

Example. (a) Corporation T and its three subsidiaries, U, V, and W, are a group of businesses that are under common control and each has a calendar year taxable year. Corporations T, U, V, and W have paid out the following amounts in unemployment insurance wages during 1976 and 1977:

	1976	1977	Increase in FUTA wages in 1977 over 1976
Corporation:			
T	$1,000,000	$1,015,000	+$15,000
U	500,000	650,000	+150,000
V	600,000	580,000	−20,000
W	40,000	100,000	+60,000
Total	2,140,000	2,345,000	205,000

(b) Since all employees of trades or businesses that are under common control are treated as employed by a single employer, the computations in section 51 are performed as if all the organizations which are under common control are one trade or business. Consequently, the amounts of the total unemployment insurance wages of the group in 1976 (*i.e.*, $2,140,000) and 1977 (*i.e.*, $2,345,000) are used to determine the increase in unemployment insurance wages in 1977 over the 1976 wage base. Since the amount equal to 102 percent of the 1976 unemployment insurance wages ($2,182,800) is greater than the amount equal to 50 percent of the 1977 unemployment insurance wages ($1,172,500), the increase in unemployment insurance wages in 1977 over the 1976 wage base is $162,200 ($2,345,000−$2,182,800). The limitations in section 51 (c), (d), and (g) (as in effect prior to enactment of the Revenue Act of 1978) must also be computed as though all the organizations under common control are one trade or business. For purposes of this example, it is assumed that none of those limitations reduce the amount of increase in unemployment insurance wages. As a result, the amount of the new jobs credit allowed to the group of business is $81,100 (50% of $162,200).

(c) The credit is apportioned among Corporations T, U, and W on the basis of their proportionate contributions to the increase in unemployment insurance wages. No credit would be allowed to Corporation V because it did not contribute to the increase in the group's unemployment insurance wages. Corporation T's share of the credit would be $5,406.66 ($81,100×($15,000÷$225,000 (*i.e.*, $15,000+$150,000+$60,000))), Corporation U's share would be $54,066.67 ($81,100×($150,000÷$225,000)), and Corporation W's share would be $21,626.67 ($81,100×($60,000÷$225,000)).

* * * * *

Par. 5. Section 1.52–2 is amended by revising paragraph (a) to read as follows:

§ 1.52–2 Adjustments for acquisitions and dispositions.

(a) *General rule.* The provisions in this section only apply to the computation of the new jobs credit. If, after December 31, 1975, an employer acquires the major portion of a trade or business or the major portion of a separate unit of a trade or business, then, for purposes of computing the new jobs credit for any calendar year ending after the acquisition, both the amount of unemployment insurance wages and the amount of total wages considered to have been paid by the acquiring employer, for both the year in which the acquisition occurred and the preceding year, must be increased, respectively, by the amount of unemployment insurance wages and the amount of total wages paid by the predecessor employer that are attributable to the acquired portion of the trade or business or separate unit. If the predecessor employer informs the acquiring employer in writing of the amount of unemployment insurance wages and the amount of total wages attributable to the acquired portion of the trade or business that have been paid during the periods preceding the acquisition, then, for purposes of computing the credit for any calendar year ending after the acquisition, the amount of unemployment insurance wages and the amount of total wages considered paid by the predecessor employer shall be decreased by those amounts. Regardless of whether the predecessor employer so informs the acquiring employer, the predecessor employer shall not be allowed a credit for the amount of any increase in the unemployment insurance wages or the total wages in the calendar year of the acquisition attributable to the acquired portion of the trade or business over the amount of such wages in the calendar year preceding the acquisition.

* * * * *

Par. 6. Section 1.52–3 is revised to read as follows:

§ 1.52–3 Limitation with respect to certain persons.

(a) *Mutual savings institutions.* In the case of an organization to which section 593 applies (that is, a mutual savings bank, a cooperative bank or a domestic building and loan association), the amount of the targeted jobs credit (new jobs credit in the case of wages paid before 1979) allowable under section 44B shall be 50 percent of the amount otherwise determined under section 51, or, in the case of an organization under common control, under § 1.52–1 (a) and (b).

(b) *Regulated investment companies and real estate investment trusts.* In the case of a regulated investment company or a real estate investment trust subject to taxation under subchapter M, chapter 1 of the Code, the amount of the targeted jobs credit (new jobs credit in the case of wages paid before 1979) allowable under section 44B shall be reduced to the company's or trust's ratable share of the credit. The ratable share shall be determined in accordance with rules similar to the rules provided in section 46(e)(2)(B) and the regulations thereunder. For purposes of computing the ratable share, the reduction of the deduction for wage or salary expenses under § 1.280C–1 shall not be taken into account.

(c) *Cooperatives*—(1) *Taxable years ending after October 31, 1978.* For taxable years ending after October 31, 1978, in the case of a cooperative organization described in section 1381(a), rules similar to rules provided in section 46(h) and the regulations thereunder shall apply in determining the distribution of the amount of the targeted jobs credit (new jobs credit in the case of wages paid before 1979) allowable to the cooperative organization and its patrons under section 44B.

(2) *Taxable years ending before November 1, 1978.* For taxable years ending before November 1, 1978, in the case of a cooperative organization described in section 1381(a), the amount of the new jobs credit allowable under section 44B shall be reduced to the cooperative's ratable share of the credit. The ratable share shall be the ratio which the taxable income of the cooperative for the taxable year bears to its taxable income increased by the amount of the deductions allowed under section 1382 (b) and (c). For purposes of computing the ratable share, the reduction of the deduction for wage or salary expenses under § 1.280C–1 shall not be taken into account.

Par. 7. Section 1.53–1 is redesignated as § 1.53–3 and new §§ 1.53–1 and 1.53–2 are added immediately after § 1.52–3 to read as follows:

§ 1.53–1 Limitation based on amount of tax.

(a) *General rule*—(1) *Targeted jobs credit.* For taxable years beginning after December 31, 1978, the amount of the

targeted jobs credit allowed by section 44B (as amended by the Revenue Act of 1978) shall not exceed 90 percent of the tax imposed by chapter 1, reduced by the credits enumerated in section 53(a).

(2) *New jobs credit.* For taxable years beginning before January 1, 1979, the amount of the new jobs credit allowed by section 44B (as in effect prior to enactment of the Revenue Act of 1978) shall not exceed the tax imposed by chapter 1, reduced by the credits enumerated in section 53(a).

(b) *Special rule for 1978–79 fiscal year.* In the case of a taxable year beginning before January 1, 1979, and ending after that date, the sum of the targeted jobs credit (determined without regard to the tax liability limitation in paragraph (a)(1) of this section) and the new jobs credit (determined without regard to the tax liability limitation in paragraph (a)(2) of this section) shall not exceed the tax imposed by chapter 1, reduced by the credits enumerated in section 53(a).

§ 1.53–2 Carryback and carryover of unused credit.

(a) *Allowance of unused credit as a carryback or carryover*—(1) *In general.* Section 53(b) (formerly designated as section 53(c) for taxable years beginning before 1979) provides for carrybacks and carryovers of unused targeted jobs credit (new jobs credit in the case of wages paid before 1979). An unused credit is the excess of the credit determined under section 51 for the taxable year over the limitation provided by § 1.53–1 for such taxable year. Subject to the limitations contained in paragraph (b) of this section and paragraph (f) of § 1.53–3, an unused credit shall be added to the amount allowable as a credit under section 44B for the years to which an unused credit can be carried. The year with respect to which an unused credit arises shall be referred to in this section as the "unused credit year.".

(2) *Taxable years to which unused credit may be carried.* An unused targeted jobs credit (new jobs credit in the case of wages paid before 1979) shall be a new employee credit carryback to each of the 3 taxable years preceding the unused credit year and a new employee credit carryover to each of the 7 taxable years succeeding the unused credit year. An unused credit must be carried first to the earliest of the taxable years to which is may be carried, and then to each of the other taxable years (in order of time) to the extent that the unused credit may not be added (because of the limitation contained in paragraph (b) of this section) to the amount allowable as a credit under section 44B for a prior taxable year.

(b) *Limitations on allowance of unused credit*—(1) *In general.* The amount of the unused targeted jobs credit (new jobs credit in the case of wages paid before 1979) from any particular unused credit year which may be added under section 53 (b) (1) (section 53 (c) (1) in the case of a new jobs credit) to the amount allowable as a credit under section 44B for any of the preceding or succeeding taxable years to which such credit may be carried shall not exceed the amount by which the limitation in § 1.53–1 for such preceding or succeeding taxable year exceeds the sum of (i) the credit allowable under section 44B for such preceding or succeeding taxable year, and (ii) other unused credits carried to such preceding or succeeding taxable year which are attributable to unused credit years prior to the particular unused credit year. Thus, in determining the amount, if any, of an unused credit from a particular unused credit year which shall be added to the amount allowable as a credit for any preceding or succeeding taxable year, the credit earned for such preceding of succeeding taxable year, plus any unused credits originating in taxable years prior to the particular unused credit year, shall first be applied against the limitation based on amount of tax for such preceding or succeeding taxable year. To the extent the limitation based on amount of tax for the preceding or succeeding year exceeds the sum of the credit earned for such year and other unused credits attributable to years prior to the particular unused credit year, the unused credit from the particular unused credit year shall be added to the amount allowable as a credit under section 44B for such preceding or succeeding year. If any portion of the unused credit is a carryback to a taxable year beginning before January 1, 1977, section 44B shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under section 44B. To the extent that an unused credit cannot be added for a particular preceding or succeeding taxable year because of the limitation contained in this paragraph, such unused credit shall be available as a carryback or carryover to the next succeeding taxable year to which it may be carried.

(2) *Special rules for an electing small business corporation.* An unused targeted jobs credit (new jobs credit in the case of wages paid before 1979) under section 44B of a corporation which arises in an unused credit year for which the corporation is not an electing small business corporation (as defined in section 1371 (b)) and which is a carryback or carryover to a taxable year for which the corporation is an electing small business corporation shall not be added to the amount allowable as a credit under section 44B to the shareholders of such corporation for any taxable year. However, a taxable year for which the corporation is an electing small business corporation shall be counted as a taxable year for purposes of determining the taxable years to which such unused credit may be carried.

(3) *Corporate acquisitions.* For the carryover of unused credits under section 44B in the case of certain corporate acquisitions, see section 381 (c) (26) and § 1.381 (c) (26)–1.

(4) *Examples.* This paragraph may be illustrated by the following examples:

Example (1). In 1978, A, a calendar year taxpayer, had an unused new jobs credit of $2,000. In 1979, A has a targeted jobs credit of $2,000 and a tax liability imposed by chapter 1 of the Code of $4,000 after all credits listed in section 53 (a) have been taken into account. The amount of A's targeted jobs credit allowable under section 44B for 1979 is 90 percent of A's tax liability. The amount of the new jobs credit that may be carried to 1978 is limited to $1,600 ($3,600 [90% of $4,000] − $2,000).

Example (2). In 1979, B, a calendar year taxpayer, has a tax liability imposed by chapter 1 of the Code of $10,000 after all credits listed in section 53(a) have been taken. B's targeted jobs credit for that taxable year is limited to 90 percent of his income tax liability or $9,000. B had a $15,000 targeted jobs credit in 1979 resulting in an unused targeted jobs credit of $6,000 for that year. In 1976 and 1977 B had tax liabilities imposed by chapter 1 of the Code of $3,000 and $4,000 respectively after all credits listed in section 53(a) had been taken. For purposes of carrying back an unused targeted jobs credit to a taxable year beginning before January 1, 1977, section 44B as amended by the Revenue Act of 1978 is deemed to have been in effect for such taxable year. Accordingly, the applicable tax liability limitation for 1976 would be governed by section 53(a) (as amended by the Revenue Act of 1978) which limits the amount of targeted jobs credit allowed to 90 percent of the tax imposed by chapter 1 of the Code after all credits listed in section 53(a) have been taken. B may carry back $2,700 (90% of $3,000) of the 1979 unused targeted jobs credit to 1976. B may carry back $4,000 of the unused targeted jobs credit to 1977 because section 53(a) as it applied to the 1977 taxable year limited the amount of the credit to 100 percent of the taxpayer's tax liability imposed by chapter 1 of the Code after all credits listed in section 53(a) had been taken.

Par. 8. Section 1.53–3, as redesignated in paragraph 7, is amended as follows:

1. Paragraph (a) is amended to read as set forth below.

2. Paragraph (f) is amended by adding a new sentence at the end thereof to read as set forth below.

§ 1.53-3 Separate rule for pass-through of jobs credit.

(a) *In general.* For taxable years beginning before January 1, 1979, under section 53(b), in the case of a new jobs credit or targeted jobs credit earned under section 44B by a partnership, estate or trust, or subchapter S corporation, the amount of the credit that may be taken into account by a partner, beneficiary, or shareholder may not exceed a limitation separately computed with respect to the partner's, beneficiary's, or shareholder's interest in the entity. The separate computation is required not only for the taxable year with respect to which the credit is earned but also for each taxable year to which an unused credit attributable to an interest in such an entity is carried back or over. This section prescribes rules, under the authority of section 44B(b), relating to the computation of the separate limitation. For purposes of this section, references to section 53 (a) and (b) are to that section as it existed before it was amended by the Revenue Act of 1978.

* * * * *

(f) *Carryback or carryover of credit subject to separate limitation.* * * * This paragraph may be illustrated by the following example:

Example. A is a shareholder in Corporation M, a subchapter S corporation. In 1978, A's pro rata share of the new jobs credit earned by Corporation M was $10,000. A could only use $2,000 of the credit in 1978 because of the separate limitation under section 53(b) (as in effect prior to enactment of the Revenue Act of 1978). In 1979, A carries the unused credit over from 1978. The carryover credit is subject to the separate limitation under section 53(b) (as in effect prior to enactment of the Revenue Act of 1978).

Par. 9. Section 1.280C-1 is amended to read as follows:

§ 1.280C-1 Disallowance of certain deductions for wage or salary expenses.

If an employer elects to claim the targeted jobs credit under section 44B (as amended by the Revenue Act of 1978), or is entitled to a new jobs credit under section 44B (as in effect prior to enactment of the Revenue Act of 1978), the employer must reduce its deduction for wage or salary expenses paid or incurred in the year the credit is earned by the amount allowable as credit (determined without regard to the provisions of section 53). In the case in which wages and salaries are capitalized, the amount subject to depreciation must be reduced by an amount equal to the amount of the credit (determined without regard to the provisions of section 53) in determining the depreciation deduction. In the case of an employer who uses the full absorption method of inventory costing under § 1.471-11, the portion of the basis of the inventory attributable to the wage or salary expenses giving rise to the credit and paid or incurred in the year the credit is earned must be reduced by the amount of the credit allowable (determined without regard to the provisions of section 53). If the employer is an organization that is under common control (as described in § 1.52-1), it must reduce its deduction for wage or salary expenses by the amount of the credit apportioned to it under § 1.52-1 (a) or (b). The deduction for wage and salary expenses must be reduced in the year the credit is earned, even if the employer is unable to use the credit in that year because of the limitations imposed by section 53.

Par. 10. There is inserted immediately after § 1.381(c)(24)-1 the following new section:

§ 1.381(c)(26)-1 Credit for employment of certain new employees.

The computation of carryovers and carrybacks of unused targeted jobs credit (new jobs credit in the case of wages paid before 1979) under section 44B in a transaction to which section 381 applies shall be made under the principles of § 1.381(c)(23)-1 (relating to the computation of carryovers and carrybacks of unused investment credit), except that provisions of paragraph (c)(4) and paragraph (e) (6), (7), and (8) of such section shall not apply.

§§ 5.44B-1 and 5.55-1 [Deleted]

Par. 11. Sections 5.44B-1 and 5.51-1 are hereby deleted.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-39555 Filed 12-27-79; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1, 16, 17, and 160

[LR-71-78]

Vinson-Trammell Act; Excess Profits on Contracts for Naval Vessels or Military Aircraft; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the Vinson-Trammell Act; Excess profits on contracts for naval vessels or military aircraft.

DATES: The public hearing will be held on March 12, 1980, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by February 26, 1980.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-71-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that appeared in the Federal Register for Friday, October 26, 1979, at page 61611 (44 FR 61611). A notice of extension of time for submission of comments and requests for a public hearing appeared in the Federal Register for Friday, December 21, 1979, at page 75670 (44 FR 75670), extending the deadline for submitting the same from December 26, 1979, to February 26, 1980.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and the notice of extension and who also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by February 26, 1980. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal

Register for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-39330 Filed 12-27-79; 8:45 am]

BILLING CODE 4830-01-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Rates; Rates to Republic of Korea

AGENCY: Postal Service.

ACTION: Proposed International Express Mail Rates to Republic of Korea.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service proposes to begin International Express Mail Service with the Republic of Korea (South Korea) at rates indicated in the tables below. Rates to the Republic of Korea are proposed to be the same as those currently charged to Taiwan. The proposed rates are scheduled to become effective on March 1, 1980.

DATE: Comments must be received on or before January 28, 1980.

ADDRESS: Written comments should be directed to the General Manager, Expedited Mail Services Division, Customer Services Department, U.S. Postal Service, Washington, DC 20260. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday in Room 5913, 475 L'Enfant Plaza West, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Patricia M. Gibert (202) 245-5624.

SUPPLEMENTARY INFORMATION: Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 533), the Postal Service invites interested persons to submit written data, views, or arguments concerning the proposed rates of postage for International Express Mail set out in the following tables (designated 8-8 and 8-13 for inclusion in Publication 42, International Mail, incorporated by reference 39 CFR 10.1).

(39 U.S.C. 401, 403, 404(2), 407, 410(a), Universal Postal Convention, Lausanne, 1974, T.I.A.S. No. 8321, Art. 6).

W. Allen Sanders,

Associate General Counsel for General Law and Administration.

BILLING CODE 7710-12-M

REPUBLIC OF KOREA

INTERNATIONAL EXPRESS MAIL

Table 8-8

CUSTOM DESIGNED SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$28.31	$28.34	$28.38	$28.42	$28.46	$28.51	$28.56
2	30 84	30.90	30.98	31.06	31.14	31.24	31.34
3	33.37	33.46	33.58	33.70	33.82	33.97	34.12
4	35.90	36.02	36.18	36 34	36.50	36.70	36.90
5	38.43	38.58	38.78	38.98	39.18	39.43	39.68
6	40.96	41.14	41.38	41.62	41.86	42.16	42.46
7	43 49	43.70	43.98	44.26	44.54	44.89	45.24
8	46.02	46.26	46.58	46.90	47.22	47.62	48.02
9	48.55	48.82	49.18	49.54	49.90	50.35	50.80
10	51.08	51.38	51.78	52.18	52.58	53.08	53.58
11	53 61	53.94	54.38	54.82	55.26	55.81	56.36
12	56.14	56.50	56.98	57.46	57.94	58.54	59.14
13	58.67	59.06	59.58	60.10	60.62	61.27	61.92
14	61.20	61.62	62.18	62.74	63.30	64.00	64.70
15	63 73	64 18	64.78	65.38	65.98	66.73	67.48
16	66.26	66.74	67.38	68.02	68.66	69.46	70.26
17	68 79	69.30	69.98	70.66	71.34	72.19	73.04
18	71.32	71.86	72.58	73.30	74.02	74.92	75.82
19	73.85	74.42	75.18	75.94	76.70	77.65	78.60
20	76.38	76.98	77.78	78 58	79.38	80.38	81.38
21	78.91	79 54	80.38	81.22	82.06	83.11	84.16
22	81.44	82.10	82.98	83.86	84.74	85.84	86.94
23	83 97	84.66	85.58	86.50	87.42	88.57	89.72
24	86.50	87.22	88 18	89.14	90.10	91.30	92.50
25	89 03	89 78	90.78	91.78	92.78	94.03	95.28
26	91.56	92.34	93.38	94.42	95.46	96.76	98.06
27	94 09	94 90	95.98	97.06	98.14	99.49	100.84
28	96 62	97.46	98.58	99.70	100.82	102.22	103.62
29	99 15	100.02	101.18	102.34	103.50	104.95	106.40
30	101.68	102.58	103 78	104.98	106.18	107.68	109.18
31	104.21	105 14	106.38	107.62	108.86	110.41	111.96
32	106 74	107.70	108.98	110.26	111.54	113.14	114.74
33	109.27	110 26	111.58	112.90	114.22	115.87	117.52

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.
2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.
3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

Table 8-13

ON DEMAND SERVICE

POUNDS (up to and including)	ZONE TO INTERNATIONAL EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	$18.03	$18.06	$18.10	$18.14	$18.18	$18.23	$18.28
2	20.56	20.62	20.70	20.78	20.86	20.96	21.06
3	23.09	23.18	23.30	23.42	23.54	23.69	23.84
4	25.62	25.74	25.90	26.06	26.22	26.42	26.62
5	28.15	28.30	28.50	28.70	28.90	29.15	29.40
6	30.68	30.86	31.10	31.34	31.58	31.88	32.18
7	33.21	33.42	33.70	33.98	34.26	34.61	34.96
8	35.74	35.98	36.30	36.62	36.94	37.34	37.74
9	38.27	38.54	38.90	39.26	39.62	40.07	40.52
10	40.80	41.10	41.50	41.90	42.30	42.80	43.30
11	43.33	43.66	44.10	44.54	44.98	45.53	46.08
12	45.86	46.22	46.70	47.18	47.66	48.26	48.86
13	48.39	48.78	49.30	49.82	50.34	50.99	51.64
14	50.92	51.34	51.90	52.46	53.02	53.72	54.42
15	53.45	53.90	54.50	55.10	55.70	56.45	57.20
16	55.98	56.46	57.10	57.74	58.38	59.18	59.98
17	58.51	59.02	59.70	60.38	61.06	61.91	62.76
18	61.04	61.58	62.30	63.02	63.74	64.64	65.54
19	63.57	64.14	64.90	65.66	66.42	67.37	68.32
20	66.10	66.70	67.50	68.30	69.10	70.10	71.10
21	68.63	69.26	70.10	70.94	71.78	72.83	73.88
22	71.16	71.82	72.70	73.58	74.46	75.56	76.66
23	73.69	74.38	75.30	76.22	77.14	78.29	79.44
24	76.22	76.94	77.90	78.86	79.82	81.02	82.22
25	78.75	79.50	80.50	81.50	82.50	83.75	85.00
26	81.28	82.06	83.10	84.14	85.18	86.48	87.78
27	83.81	84.62	85.70	86.78	87.86	89.21	90.56
28	86.34	87.18	88.30	89.42	90.54	91.94	93.34
29	88.87	89.74	90.90	92.06	93.22	94.67	96.12
30	91.40	92.30	93.50	94.70	95.90	97.40	98.90
31	93.93	94.86	96.10	97.34	98.58	100.13	101.68
32	96.46	97.42	98.70	99.98	101.26	102.86	104.46
33	98.99	99.98	101.30	102.62	103.94	105.59	107.24

NOTES: 1) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

[FR Doc. 79-39669 Filed 12-27-79; 8:45 am]
BILLING CODE 7710-12-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1380-5]

Approval and Promulation of State Implementation Plan; Montana State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The purpose of this notice is to reopen the record on EPA's proposed conditional approval of the State Implementation Plan for attaining the national ambient air quality standards for sulfur dioxide in East Helena, Montana, and to invite the public to review and comment on materials not made available by the proposal published on August 2, 1979 (44 FR 45420).

DATES: Comments must be received on or before December 28, 1979.

ADDRESSES: Comments received on EPA's proposal, EPA's evaluation report, and the SIP submission itself are available for review by any interested persons at:

Environmental Protection Agency, Montana Office, FOB, Drawer 10096, 301 South Park, Helena, Montana 59601

Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Region VIII, Regional Library, 1860 Lincoln Street, Denver, Colorado 80295

FOR FURTHER INFORMATION CONTACT: Ivan W. Dodson, Director, Montana Office, Environmental Protection Agency, Region VIII, FOB, Drawer 10096, 301 South Park, Helena, Montana 59601 (406) 449-5432.

SUPPLEMENTARY INFORMATION: On April 24, 1979, the State of Montana submitted a State Implementation Plan revision which addressed East Helena and was intended to meet the requirements of Part D of the Clean Air Act, as amended in 1977.

On August 2, 1979 (44 FR 45420), EPA proposed to approve the plan on the condition that the State provide additional documentation that the proposed 375 foot stack at the ASARCO lead smelter constituted good engineering practice as required in Section 123 of the Clean Air Act. However, the technical support for EPA's determination did not include certain documents which supported the results of EPA's review. Those documents are now available for review and comment.

Additionally, on September 21, 1979, and December 12, 1979, EPA personnel met with representatives of the ASARCO company to discuss EPA's proposed action. Summaries of the meetings and resulting memoranda are also available for public review and comment.

Interested persons are invited to review these new materials now available and comment on their impact on EPA's proposed action with respect to the ASARCO lead smelter.

Dated: December 17, 1979.

David Standley,

Acting Regional Administrator.

[FR Doc. 79-39508 Filed 12-27-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 250

[FR 1381-3]

Hazardous Waste; Notice of Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today making available to the public four reports on hazardous waste testing procedures and hazardous waste management which were completed and published after the close of the comment period on EPA's proposed regulations implementing Sections 3001-3004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended [43 FR 18506-18512, April 28, 1978, and 43 FR 58946-59022, December 18, 1978]. In addition, EPA is extending the comment period on six reports previously noticed for public comment on August 22, 1979 (44 FR 49277) and October 2, 1979 (44 FR 56724-56725).

DATES: Comments on these ten reports are due no later than February 6, 1980.

ADDRESSES: Comments should be addressed to Deborah Villari, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Comments should be identified as referring to the Section 3001 regulatory docket.

Copies of the reports described in this notice are available for reading at the EPA Public Information Reference Unit (Room 2404) and the RCRA Docket Room (Room 2711), both located at 401 M Street, S.W., Washington, DC 20460, and at all EPA Regional Office libraries during the hours of 9:00 A.M. to 4:30 P.M., Monday through Fridays. Copies may also be ordered from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268, (513) 684-8491. EPA plans to provide the reports noticed today free of charge to all who request copies. However, the Agency may charge $0.20 per page for photocopying if the available copies run out.

FOR FURTHER INFORMATION CONTACT: Deborah Villari, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-9173.

SUPPLEMENTARY INFORMATION: During the development of its proposed Section 3001 regulations, EPA or other organizations initiated several studies to obtain additional information on major issues raised by those regulations. In a number of cases, reports of those studies have only recently been finalized or are not scheduled to be finalized until some time in the near future. The purpose of this notice is to announce the availability of four of these reports for public comment and EPA's intent to make available several additional reports dealing with section 3001 over the next several months. Announcements regarding the release of other reports will be made in subsequent Federal Register notices.

The reports which EPA is making available to the public today are:

Proposed RCRA Extraction Procedure: Reproducibility and Sensitivity, Parts [a] Introduction, [b] Phase I: Reproducibility of the Proposed Extraction Procedure, and [c] Phase II: Sensitivity of the Extraction Procedure to Modifications in Laboratory Procedure, November 1, 1979, Electric Power Research Institute, Palo Alto, CA.

This study, undertaken by the Electric Power Research Institute (EPRI), was designed to determine the reproducibility both of EPA's proposed Extraction Procedure [EP][43 *FR* 58956] and of the associated analytical procedures. The study also sought to determine the effect that various changes in the EP procedure would have on the final results when the EP was applied to utility wastes. The parameters changed in this study included agitation rate, eluant composition, particle size of the waste, analytical methodology, and liquid/solid separation techniques.

Interim Phase I Report: Electroplating Wastewater Sludge Characterization, Cooperative Agreement No. R880026-01, September 12, 1979.

This study was conducted by the American Electroplaters' Society under a grant from EPA's Industrial

Environmental Research Laboratory, both to determine the reproducibility of the proposed EP and to characterize the leachability of wastewater treatment sludges characteristic of those generated by the electroplating industry.

Evaluation of the Procedures for Identification of Hazardous Waste, Interim Report, August 1979, Environmental Monitoring and Systems Laboratory, U. S. Environmental Protection Agency, Las Vegas, NV.

The proposed Section 3001 regulations provide specific procedures for sampling, extraction, and analysis of wastes to identify those wastes which are hazardous due to the presence of leachable toxic components. This report details progress on a study that has been undertaken to obtain additional data to assure the accuracy and reproducibility of these proposed procedures using industrial wastes.

Evaluation of Solid Waste Extraction Procedures and Various Hazard Identification Tests, September 1979, EPA Contract No. 68-01-4725, NUS Corporation, Pittsburgh, PA.

In this study, two leaching tests developed by the EPA, the Toxicant Extraction Procedure (TEP) and the Extraction Procedure (EP), were evaluated for their reproducibility. The tests proposed by EPA on December 18, 1978 to determine whether a waste has ignitable, corrosive or reactive properties (43 FR 58955-58956) were also evaluated to determine their usefulness in a regulatory program. This report summarizes the results of this series of reproducibility studies.

In addition to these four reports, EPA is extending the comment period for the reports which it perviously noticed for public comment on August 22, 1979 at 44 FR 49277 (Comparison of Three Waste Leaching Tests: Executive Summary, EPA-600/8-79-001 and Background Study on the Development of a Standard Leaching Test, EPA-600/2-79-109,) and October 2, 1979, at 44 FR 56724-56725 (Compilation and Evaluation of Leaching Test Methods, EPA-600/2-78-095; Comparison of Three Wastes Leaching Tests, EPA-600/2-79-071; Toxicity of Leachates: Interim Progress Report, Oak Ridge National Laboratory and Assessment of RCRA EP Test Results on FBC Residue: Part II—Proposed Procedure in Federal Register, December 18, 1979). Due to distribution problems, EPA has been unable to make these reports reasonably available to the public; therefore, the comment period for these six reports is being extended to allow the public adequate time to review and comment on them.

Comments on these reports and letters should be submitted to EPA no later than February 6, 1980. The purpose of making this information available to the public is to allow comments on the accuracy of the data contained in the reports and the conclusions reached, not to reopen the comment period on the EPA's proposed Section 3001-3004 regulations. Commenters should limit the scope of their written submissions accordingly.

Dated: December 15, 1979.

Swep T. Davis, Jr.,

Acting Assistant Administrator for Water and Waste Management.

[FR Doc. 79-39631 Filed 12-27-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 9230

Trespass: Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of intent to propose rulemaking and extension of comment period.

SUBJECT: On October 22, 1979, the Bureau of Land Management gave public notice in the Federal Register (44 FR 60764) that it is considering a proposed rulemaking to amend 43 CFR Part 9230—Trespass. Statements in the supplementary information in that notice contained material errors with reference to payment for damages to the Federal mineral estate. The Bureau of Land Management hereby revokes and disclaims these statements. The remainder of the notice of intent to propose rulemaking is unchanged. In consideration of this correction the comment period for the notice, which had closed on November 21, 1979, is hereby reopened.

DATE: Comments by January 28, 1980.

ADDRESS: Send comments to: Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular working hours (7:45 a.m.-4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Walter Rewinski, 202/343-6821, or Ann Vance, 202-343-4803

December 21, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR. Doc. 79-39573 Filed 12-27-79; 8:45 am]

BILLING CODE 4310-84-M

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Chapter 1

Draft Federal Acquisition Regulation; Availability and Request for Comment

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of Availability and Request for Comment on draft Federal Acquisition Regulation.

SUMMARY: The Office of Federal Procurement Policy is making available for review and comment by interested parties draft segments of the Federal Acquisition Regulation regarding (1) renegotiation objectives, (2) profit, and (3) the proposed cost principle on Facilities Capital Cost of Money. Since OFPP intends to direct the implementation of the profit segment by means of a Policy Letter as soon as final regulatory coverage is developed, the proposed Policy Letter is also available for review and comment.[1]

DATE: Comments must be submitted by February 29, 1980.

ADDRESS: Obtain copies of the draft regulations and the proposed Policy Letter from and submit comments to Conroy B. Johnson, Deputy Associate Administrator for Regulations and Procedures, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9013, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Conroy Johnson, Telephone 202-395-6166.

SUPPLEMENTARY INFORMATION: The proposed FAR segment on profit is the outgrowth of the Commission on Government Procurement recommendation that the Office of Federal Procurement Policy (OFPP) take the lead in development of uniform Government-wide guidelines for determining profit objectives in negotiated contracts. This recommendation was accepted by the executive branch and acknowledged by a notice appearing in the September 17, 1976 Federal Register (41 FR 40238).

The Federal Acquisition Regulation (FAR) segments and proposed Policy Letter on which OFPP is soliciting comments were developed by an interagency task group chaired by OFPP. The FAR Project Office provided editing assistance.

The proposed FAR segment on profit certain criteria to be considered in

[1] Draft regulation and policy letter filed as part of the original document.

establishing profit negotiation objectives irrespective of the specific approach employed. In addition, each agency, if it had not already done so, would be required to prescribe a structured approach for use by contracting officers in establishing profit negotiation objectives. Agencies would be encouraged to adopt a weighted guidelines approach but other structured approaches could be prescribed provided they incorporate a logic and rationale similar to that of the weighted guidelines method. In either case, the views of interested parties would have to be solicited and considered.

Alternatively, an agency could elect to adopt the structured approach prescribed by another agency. For example, an agency might elect to adopt one of the weighted guidelines methods presently prescribed by the Department of Defense, the Department of Energy or the Environmental Protection Agency. This provision would be particularly helpful to smaller agencies lacking the resources or expertise to develop their own structured approach.

Differences in agencies' missions and market place environments are viewed as precluding adoption of a single uniform structured approach with common profit factors, weightings and profit ranges. In time, it may prove practical to accommodate these differences under an expanded weighted guidelines method such as recently proposed by the Department of Defense or under some other approach. For similar reasons, agencies would have the latitude whether to recognize the imputed cost determined in accordance with Cost Accounting Standard No. 414, Cost of Money as an Element of the Cost of Facilities Capital (4 CFR 331 et seq.).

Public participation in the formulation of a uniform Government-wide profit policy has been encouraged from the outset of this effort. Public hearings were held November 4 and 8, 1976 to consider major issues pertinent to the adoption of such a policy. In February 1977 OFPP circulated a proposed profit policy based on the weighted guidelines method for comment by executive agencies, trade association, and others who had expressed an interest in this matter in conjunction with the public hearings. The majority of responders to the proposal indicated that, subject to some exceptions, a weighted guidelines approach could be equitably applied to negotiated contracts Government-wide. However, other alternatives had not been explored by OFPP and a research project was initiated for that purpose.

Notice of this research effort was published in the December 13, 1977 Federal Register (42 FR 62576) soliciting the views of interested parties on any innovative concept that might be offered for consideration. The result of this effort was the Logistics Management Institute's (LMI) approach to a Uniform Profit Policy for Government Acquisition. Public comment on the LMI approach was solicited through a notice appearing in the March 6, 1979 Federal Register (44 FR 12225).

Few commentors found the LMI proposal totally acceptable. A common problem cited related to LMI's use of historical composite industrial averages as the base line for determining profit negotiation objectives. Lack of line-of-business data necessitated LMI's use of such averages. OFPP believes that LMI's approach is conceptually sound and that most of the problems cited by commentors could be satisfactorily resolved. (See LMI's supplemental report which is available on request.) However, since serious inequities could result from the use of composite averages—with no near term acceptable alternative in sight—OFPP decided not to pursue the LMI approach any further at this time.

In summary, the proposed FAR segments are intended to provide the foundation for determining equitable profit negotiation objectives and for public participation in the establishment of structured approaches tailored to agencies' missions and market place environments. OFPP believes these disciplines would prove meaningful and in the public interest.

Dated: December 20, 1979.

LeRoy J. Haugh,

Associate Administrator for Regulations and Procedures.

[FR Doc. 79-39559 Filed 12-27-79; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 621

Fishery Conservation and Management Act of 1976—Civil Procedures

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Proposed amendments to 50 CFR Part 621, Civil Procedures.

SUMMARY: Amendments are proposed to 50 CFR Part 621, which contains regulations governing civil procedures under the Fishery Conservation and Management Act of 1976. The proposed amendments would accomplish the following objectives:

1. Alter the existing civil penalty assessment procedures to provide for the issuance of a single Notice of Violation and Assessment;
2. Provide for an additional procedure to impose sanctions against domestic fishing permits pursuant to regulations implementing fishery management plans;
3. Specify the hearing procedures available to holders of fishing permits against which sanctions are imposed; and
4. Effect certain amendments of a technical nature.

COMMENTS: Comments on these proposed amendments will be accepted on or before February 11, 1980.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or David Allan Fitch, NOAA Office of General Counsel (GCEL), Room 280-L, 2001 Wisconsin Avenue, NW, Washington, D.C. 20235. Telephone (202) 254-8350.

SUPPLEMENTARY INFORMATION: On March 1, 1977, at 42 FR 12026, the National Oceanic and Atmospheric Administration (NOAA) published interim regulations governing administrative procedures which apply to violations of the Fishery Conservation and Management Act of 1976 (the Act). The interim regulations became effective immediately and have remained in effect without change since that time. The comment period for the interim regulations extended until May 31, 1977. Two comments were received during the comment period (see below).

The purpose of these proposed amendments is fourfold: (1) to alter the existing procedures by which civil penalties are assessed, (2) to provide for the imposition of permit sanctions pursuant to regulations which implement fishery management plans, (3) to specify with greater clarity the hearing procedures available to owners of vessels whose permits are subject to sanction, and (4) to effect certain other technical amendments. These proposals are discussed in greater detail below.

Civil Penalty Assessment.

Section 308 of the Act authorizes the Secretary, upon finding that a person has violated the Act, and after notice and an opportunity for a formal evidentiary hearing, to assess a civil penalty against that person. The Secretary's authority has been delegated to the NOAA Administrator, and with certain reservations has been redelegated to NOAA's Regional Counsels in the NOAA Office of General Counsel.

The interim regulations currently provide for the exercise of this authority through a "two tiered" assessment system. Briefly described, this system operates as follows: When the agency determines that a violation of the Act has occurred which, if proven, would warrant the assessment of a civil penalty, a Notice of Violation (NOV) is issued to the alleged violator (respondent). This is a charging document, in which the respondent is informed of the agency's belief that a violation has occurred and the facts which form the basis for that belief. The respondent has 45 days in which to respond formally or informally to this document. After 45 days, the agency may issue a Notice of Assessment (NOA), which contains findings and conclusions with respect to the facts of the case, and assesses a penalty. The assessment becomes final after 45 days if a hearing is not requested during that time. Upon a request for hearing, the final agency action is stayed; and after a formal hearing under 5 U.S.C. 554, the administrative law judge determines, subject to administrative appeal, whether a violation has been proven and what money penalty is to be paid.

NOAA has utilized the assessment system described above for nearly three years. During this period, the system has proved cumbersome and time-consuming. The timely preparation of two complex documents for each case has proved burdensome for the agency. The availability of two 45-day response periods, and the demand on the NOAA resources required to react fully to them, have unduly lengthened the assessment process and substantially frustrated the goal of prompt adjudication of alleged violations, contrary to efficient administration of an enforcement program and the best interests of the parties.

NOAA proposes to remedy those problems by the institution of a one-step civil penalty assessment process. This should substantially accelerate the assessment of penalties. The central feature of the proposed system is a "Notice of Violation and Assessment" (NOVA), which would combine the functios currently served by the NOV and NOA into one document. The NOVA would operate as a charging document and, upon the occurrence of certain events, would also serve as the document by which a civil penalty is assessed. Figure 1 illustrates the general format of the proposed NOVA.

Figure 1.—U.S. Department of Commerce

National Oceanic and Atmospheric Administration

Notice of Violation and Assessment of Administrative Penalty

Respondent: ———
File No: ———
Mailed to: ———
Cert. No: ———

This is your official notice of the civil violation(s) and administrative penalty described herein.

You are entitled to request a hearing (like a trial) before an Administrative Law Judge to deny and contest all, or any part, of the violation charged and the forfeiture and/or civil (administrative) penalty, imposed. This is not a criminal action. You, your attorney, or other representative, are also invited to contact the undersigned to discuss this Matter and its disposition, or to urge any modification of the allegations and penalty which you may feel is warranted by all of the facts and circumstances.

Warning, if you should fail to exercise your rights within 30 calendar days following receipt of this notice, all of the allegations and the penalty herein will be taken as admitted and this assessment will become a final administrative order enforceable in any United States District Court as provided in Section 1858, Title 16 United States Code, The Fishery Conservation and Management Act of 1976, as amended, and the implementing regulations in Part 621, Title 50, Code of Federal Regulations (copies attached for your information and guidance).

Facts constituting violation(s): On or about ——, at or about —— latitude and —— longitude, within the Fishery Conservation Zone of the United States (as described in 16 U.S.C. § 1811), the Respondent named ——— herein, a person subject to the jurisdiction of the United States, did:

Statute/regulation/permit violated: Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1857 ——, and ——.

Evidence seized: ———

Findings, conclusions, and order: Having considered all of the facts and circumstances presented in this Matter, and taking into account the criteria for determining the amount of the civil penalty [as provided in 16 U.S.C. § 1858(a)], I do hereby find and conclude that the Respondent herein did violate the Fishery Conservation and Management Act of 1976 as alleged, in every particular, and that a just and reasonable disposition for such violation(s) is forfeiture of all evidence seized plus a civil penalty in the amount of $——. It is so ordered.

For the Secretary of Commerce ———, dated ———

Send reply or make inquiry to:

Agreed disposition: I do not wish to contest this notice of violation and assessment. I hereby waive my right to a hearing and relinquish and transfer to the United States all right, title, and interest in any items listed above as seized. I have enclosed payment of the penalty assessed (by check or money order payable to the "Treasurer of the United States"). I take this action on the understanding that it is a settlement of all charges, claims, and complaints against me by the United States resulting from the incident(s) described in this notice of violation and assessment.

Date ———.

Signature of Respondent or Authorized Representative

The proposed NOVA system would operate as follows:

1. When the agency determines that a violation has occurred which, if proven, would warrant the assessment of a civil penalty, a NOVA will be issued to the respondent. the NOVA will contain the same information as is currently found in the NOV. In addition, however, the NOVA will state the findings and conclusions which, absent subsequent additions or corrections to the record, would be the basis for assessment of a civil penalty. Documents which were used in making the findings and conclusions may be attached to the NOVA.

Upon receipt of the NOVA, the respondent shall have thirty (30) calendar days in which to respond. During this period, the respondent may (1) pay the proposed civil penalty (or proposed compromise penalty, if any), (2) seek to have the NOVA amended to reflect what respondent sees as the true facts, (3) request a hearing on the matter, or (4) do nothing.

3. If, during the 30-day period, the respondent pays a the proposed penalty or otherwise settles the case, the civil penalty action is terminated. If respondent seeks to have the NOVA amended, the agency must, as soon as possible, determine whether it will amend the NOVA and inform the respondent of its decision. The agency may enlarge the 30-day period if necessary to respond to a timely request for amendment. Finally the respondent may request a hearing before an administrative law judge. The agency, in its descretion, may treat any communication as a request for a hearing. All hearing requests will be promptly forwarded to the NOAA Office of Hearings and Appeals, which will docket the matter for hearing.

4. If respondent fails to request a hearing during the 30-day period (as extended where applicable), the dual role of the NOVA comes into play. When the applicable period expires, the NOVA becomes "final": the charges it contains are treated as admitted, and the civil penalty prescribed is assessed and becomes binding. The assessment is enforceable against the respondent in any federal district court where

respondent resides or can be found, and the facts of the case may not be reviewed by this court.

If a hearing is requested, the case will be processed according to current practice. An administrative law judge will conduct a formal hearing and render an initial decision; his decision may be appealed to the NOAA General Counsel, and thereafter to federal district court.

The NOVA system is intended to simplify and expedite the civil penalty assessment process by shortening the time between the initial formal charge and the final agency decision. Additionally, the system will tend to move individual cases more quickly into the hearing mode, thus shortening the initial "informal" phase. The agency does not anticipate that this change will substantially affect the number of cases settled before hearing; although all cases will be processed more expeditiously. This trend will benefit both the Government and individual respondents, whose due process rights will not be adversely affected.

Imposition of Permit Sanctions

Imposition of permit sanctions under the Act is governed by Subpart D of 50 CFR Part 621. Subpart D, at § 621.52(a), currently prescribes three bases for the imposition of sanctions. The proposed amendments would add a fourth basis; specifically, the satisfaction of the requirements of any regulation which governs permit sanctions in implementing a fishery management plan. In a separate proposed rulemaking promulgated December 3, 1979 at 44 FR 69312, NOAA has proposed a "point" system for permit sanctions, to apply to and be governed by regulations issued to implement the Fishery Management Plan for Atlantic Groundfish, at 50 CFR Part 651. although Part 651 would govern the imposition of such sanctions, the rights of holders of permits against which sanctions have been or are to be imposed will continue to be described in this Part 621. These proposed amendments would also amend existing §§ 621.54, 621.55, and 621.56 to clarify the procedural rights of permit holders under Subpart D. Specifically, the amendments would alter existing provisions regarding the effective dates of permit sanctions and the timing and nature of hearings available to permit holders.

A. *Effective date of sanctions.* The proposed amendments provide that a permit sanction may become effective earlier than 30 days from the date of receipt of the Notice of Permit Sanction when:

1. Substantial harm to a fishery resource may result from a later effective date (this is already provided for in current regulations);

2. The offense serving as the basis of the permit sanction was willful or egregious; or

3. The basis for the sanction is the accumulation of sufficient points for violations under any fishery management plan.

Additionally, a permit sanction may become effective upon passage of 30 days from the date of receipt of the Notice of Permit Sanction if the basis for the sanction is the nonpayment of civil penalty or criminal fine.

B. *Opportunity for hearing.* Finally, sanctions other than those referred to above would not become effective until an opportunity for hearing has been afforded, and the facts serving as the basis for the sanction have been fully and finally adjudicated, either by the agency or by a court of competent jurisdiction.

Sanctions based on point systems or failure to pay civil penalties or criminal fines are, by their nature, actions with respect to which an opportunity for formal hearing has already been afforded. Sanctions *not* based on point systems or failure to pay, however, may become appropriate before an opportunity for hearing has been afforded. Since it is the agency's view that the opportunity for a hearing at some point in the process is required by law, the proposed amendments would provide for a hearing in these cases prior to the imposition of the sanction, except, as noted above, in cases of wilful or egregious violations, or where substantial harm to a fishery resources may result.

Technical Amendments

Other amendments are proposed which are of a minor or technical nature. These include, in response to the comments received on the interim regulations, deletion of the provision at § 621.22 requiring that corporate respondents or petitioners file documents with the agency only under signature of corporate officers (the corporation's counsel could do so).

Note.—NOAA's Assistant Administrator for Fisheries has determined that these proposed amendments to Part 621: (1) do not constitute a major Federal action requiring the preparation of an Environmental Impact Statement, and (2) do not constitute a significant action requiring the preparation of a regulatory analysis under Executive Order 12044.

16 U.S.C. 1801, *et seq.*

Signed at Washington, D.C. this 20th day of December, 1979.

Winfred H. Melbohm,

Executive Director, National Marine Fisheries Service.

It is therefore proposed to amend 50 CFR Part 621 as follows:

1. Revise this Part 621 by substituting the word, "Administrator," in each place the word, "Director," appears.

2. Add a new paragraph (e) to § 621.1 to read as follows:

§ 621.1 Purpose and scope.

* * * * * * *

(e) Subparts B and C of this Part shall apply to any civil penalty proceeding initiated by Notice of Violation and Assessment (NOVA) subsequent to the effective date of revisions to this Part which authorized issuance of the NOVA' regardless of when the act or omission which is the basis of a civil penalty proceeding occurred. Proceedings initiated by Notice of Violation under former Subparts B and C, promulgated March 1, 1977, 42 FR 11639, shall be governed by those procedures, except as otherwise stipulated by the parties.

3. Revise § 621.4(b) to read as follows:

§ 621.4 Definitions

* * * * * * *

(b) *Administrator.* Administrator, National Oceanic and Atmospheric Administration, or his or her designee.

* * * * * * *

4. Revise § 621.21 to read as follows:

§ 621.21 Notice of Violation and Assessment (NOVA)

(a) A Notice of violation and assessment (NOVA) shall be issued by the Administrator and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). Where appropriate, or prescribed by § 621.26(a), a copy of the NOVA shall similarly be served upon the owner of an affected vessel, as defined in § 621.26(b), if the owner is not the respondent. Although no specific form is prescribed, the NOVA shall contain: (1) a concise statement of the facts believed to show a violation; (2) a specific reference to the provisions of the Act, regulation, permit, or governing international fishery agreement allegedly violated; (3) the findings and conclusions upon which the Administrator has based the proposed assessment; and (4) the amount of penalty proposed to be assessed. The NOVA may also contain an initial proposal for compromise or settlement of the case. The Administrator may also attach documents which illuminate the

facts believed to show a violation. The NOVA shall advise the respondent of his or her rights at that point in the proceeding, and shall be accompanied by a copy of regulations governing civil procedures, this Part 621.

5. Revise § 621.22 to read as follows:

§ 621.22 Procedures upon receipt of NOVA.

(a) The respondent shall have 30 calendar days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the proposed penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended or modified to conform to the facts as respondent sees them, as prescribed in paragraph (b), of this section;

(3) Request a hearing, as prescribed in paragraph (c), of this section; or

(4) Take no action, in which case the NOVA shall become final and constitute the final agency decision in the matter, as further described in paragraph (d), of this section. Options 2, 3 and 4, above, may also be exercised by the owner of an affected vessel, as defined in that section.

(b) If the respondent or the owner of an affected vessel seeks amendment or modification of the NOVA to conform to the facts as he or hse sees them, he or she shall contact the Administrator or the Administrator's designee at the telephone number or address specified in the NOVA.

Where amendment or modification is sought, the Administrator shall either amend the NOVA or decline to amend it, and shall so notify the respondent (or owner, as appropriate). The Administrator may, pursuant to a request for modification or amendment under this subsection, extend the 30–day period referred to the paragraph (a), of this section, but in no event shall such period exceed 45 days.

(c) If the respondent or the owner of an affected vessel requests a hearing, such request shall be in writing, and shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOVA.

(d) Any denial, in whole or in part, of any request under this section, which is based upon untimeliness shall be made in writing.

(e) The Administrator may, in his or her descretion, treat any communication from a respondent or owner as a request for a hearing pursuant to paragraph (c). Requests for hearings shall promptly be forwarded to the NOAA Office of Hearings and Appeals for further proceedings.

6. Revise § 621.23 to read as follows:

§ 621.23 Assessment upon expiration of 30-day period.

If, during the period prescribed in § 621.22,

(9) No action is taken,

(b) All outstanding requests for modifications or amendment are denied, and no further action is taken, or

(c) No proposed penalty or compromise penalty (if any) is accepted by respondent,

then the proposed assessment shall become effective and shall constitute the final administrative decision and order of the Administrator; and shall be enforceable against the respondent in an appropriate United States district court.

§§ 621.24–621.28 [Deleted]

7. Delete §§ 621.24, 621.25, 621.26, 621.27 and 621.28.

8. Add a new § 621.24 (formerly § 621.27, with conforming amendments) to read as follows:

§ 621.24 Payment of final assessment.

(a) Respondent shall make full payment of the civil penalty assessment within 30 calendar days of the date upon which the assessment becomes final; or, if judicial review of the assessment is initiated under section 308(b) of the Act during such 30 day period, within 10 calendar days after the appropriate court has entered final judgment in favor of the Administrator, unless the court's order provides otherwise. Payment shall be made by mailing or delivering to the Administrator at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States."

(b) Upon any failure to pay the civil penalty assessed, the Administrator may request the Attorney General of the United States to recover the amount assessed in any appropriate district court of the United States; or may take action under § 621.25 of this part.

9. Add a new § 621.25 (formerly § 621.28, with conforming amendments) to read as follows:

§ 621.25 Compromise of civil monetary penalty.

(a) In his or her sole discretion the Administrator may compromise, modify, remit, or mitigate, with or without conditions, any civil monetary penalty which has been imposed under this Part 621, or which is subject to such imposition.

(b) The compromise authority of the Administrator under this section shall be in addition to any similar authority provided in the Act or in these regulations, and may be exercised either upon the initiative of the Administrator or in response to a request of the respondent or other affected vessel owner.

(c) If the Administrator takes action under this section prior to the issuance of a NOVA or after an assessment becomes final, the Administration will prepare a document indicating the action taken and citing this section and section 308(d) of the Act as authority. Once the case has been assigned for hearing under § 621.31 of this Part, the Administrator will, except in unusual circumstances, defer any compromise action under this section until the administrative law judge has rendered an initial decision in the matter. Neither the existence of the compromise authority of the Administrator under this section nor the Administrator's exercise thereof at any time shall change the date upon which an assessment becomes final.

(d) If compromise action is requested or otherwise becomes appropriate for the Administrator's consideration during the pendency of a petition for relief from forfeiture, filed under Subpart E of this Part 621, the Administrator may consolidate in a manner consistent with the provisions of Subpart E his or her consideration of the two matters.

10. Add a new § 621.26, to read as follows:

§ 621.26 Application of this Subpart to vessel owners.

(a) The provisions of this subpart shall apply to owners of affected vessels where such application is specifically provided for in regulations implementing any Fishery Management Plan.

(b) For the purposes of paragraph (a), "affected vessel" shall mean a fishery vessel of the United States whose federal permit may be affected by a civil penalty proceeding under this Part.

11. Revise § 621.31 to read as follows:

§ 621.31 Commencement of hearing procedures.

Following receipt of a written request for hearing filed in a timely manner in accordance with § 621.22 of Subpart B of this part, the Administrator will commence procedures under this subpart by forwarding the request, a copy of the NOVA, and any response thereto, to the NOAA Office of Hearings and Appeals, which shall docket the matter for hearing. Written notice of the assignment shall promptly be given to the respondent and the owner of the affected vessel (as defined in § 621.42(b)) if the owner is other than the respondent, with the name and address of the attorney who will

represent the Administrator in the proceedings (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the NOAA Office of Hearings and Appeals, and a copy will be served on the opposing party (respondent or agency representative).

12. Amend § 621.32 by revising the list of Department of Commerce officials in paragraph (b) to read as follows:

§ 621.32 Ex parte communications.

* * * * *

(b) * * *

Administrator, Deputy Administrator, Assistant Administrator for Fisheries, Deputy Assistant Administrator for Fisheries, and the Executive Director, Office of Resource Conservation and Management Director, Enforcement Division Chief, and all Regional Directors, National Marine Fisheries Service.

13. Revise § 621.33(a)(1) to read as follows:

§ 621.33 Duties and powers of judges.

(a) * * *

(1) Rule on a request to participate as a party in the proceedings by allowing, denying, or limiting such participation, provided that the respondent, the owner of an affected vessel, and the agency representative shall be parties, and provided further that the judge shall prior to ruling ascertain the views of the other parties and base his ruling on whether the request is from a person who could be directly and adversely affected by the final decision and who may contribute materially to the disposition of the proceedings;

14. Revise § 621.34 to read as follows:

§ 621.34 Participation by parties.

(a) The respondent, the owner (where prescribed by Section 621.42), the agency representative, and, to the extent permitted by the judge, any other party, may appear in person, by counsel, or by other representative, and may examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, present documentary or other evidence in support of his case or defense, and conduct oral argument at the close of testimony, provided, however, that this section shall not be interpreted to diminish the powers and duties of the judge set forth in § 621.33 of this part.

(b) Failure of any party to appear at the hearing shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the record of the hearing.

15. Add a new § 621.42 as follows:

§ 621.42 Application of this subpart to vessel owners.

(a) The provisions of this subpart shall apply to owners of affected vessels where such application is specifically provided for in regulations implementing any Fishery Management Plan.

(b) For the purposes of paragraph (a), "affected vessel" shall mean a fishing vessel of the United States whose federal permit may be affected by a civil penalty proceeding under this Part.

16. Add a new paragraph (a)(4) to § 621.52 to read as follows:

§ 621.52 Basis for sanctions.

(a) * * *

(4) The requirements of a regulation issued under the Act to govern permit sanctions in the implementation of a fishery management plan have been satisfied (example: permit sanction point systems).

17. Revise paragraph (c) of § 621.54 to read as follows:

§ 621.54 Notice of permit sanction.

* * * * *

(c) The Administrator may make the permit sanction effective immediately or otherwise earlier than 30 days after the notice of permit sanction if he finds, and summarizes such finding and the basis therefor in the notice, that

(1) Substantial harm to a fishery resource of the United States may result from a later effective date; or

(2) The offense serving as the basis for the permit sanction was willful or egregious; or

(3) The basis for the sanction is the accumulation of sufficient points under other regulations in this Chapter implementing a fishery management plan.

If the Administrator acts under this paragraph, he shall seek to expedite a hearing the opportunity for which is provided by § 621.55, but a request for hearing shall not delay the effectiveness of the sanction.

[FR Doc. 79-39535 Filed 12-27-79; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 44, No. 250
Friday, December 28, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Distribution of Rabies Vaccine, Brucella Abortus Vaccine, Brucella Abortus Antigen, and Tuberculin-PPD Bovis—Proposed New Restrictions; Extension of Time for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of time for comments.

SUMMARY: This document extends the time period for submitting written comments, data, views, and other information with respect to the notice of the Department's intent to add conditions to all U.S. Veterinary Biological Product Licenses for Rabies Vaccine, Brucella Abortus Vaccine, Brucella Abortus Antigen, and Tuberculin-PPD Bovis under the provisions of Title 9, CFR Part 102.5(e). This extension of time is granted in order to provide additional time in which interested parties may prepare relevant data and information and to develop sound views and comments. The effect of this action would be to extend the comment period on the subject notice for an additional 60 days from the original closing date, which was November 20, 1979.

DATE: Comments must be received on or before January 19, 1980.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the notice to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, 301–436–8245.

SUPPLEMENTARY INFORMATION: On September 21, 1979, there was published in the Federal Register (44 FR 54737) advance notice of the Department's proposal to add conditions to all U.S. Veterinary Biological Product Licenses for Rabies Vaccine, Brucella Abortus Vaccine, Brucella Abortus Antigen, and Tuberculin-PPD Bovis, under the provisions of Title 9, CFR Part 102.5(e).

These conditions would require that such vaccines and antigens contain restrictive statements on their labels limiting them to use by or under the direction of a veterinarian and that distribution of these products by licensees be subject to any State restrictions regarding their distribution and sale by which may be in effect.

The notice provided for receipt of comments on or before November 20, 1979.

Licensed manufacturers of these products have requested the Department for additional time in which to obtain relevant data and information and to develop sound views and comments. Since the Department is interested in receiving meaningful views and comments, these circumstances are considered to be adequate justification for an extension of the time period originally allotted for submitting views and comments.

Therefore, the period for the submission of comments concerning the notice is hereby extended until January 19, 1980.

Done at Washington, D.C., this 21st day of December 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-39592 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Determination of the Support Prices for Wool and Mohair for the 1980 Marketing Year

AGENCY: Commodity Credit Corporation.

ACTION: Notice of determination.

SUMMARY: This is a notice of the determination of the Secretary of Agriculture, in accordance with the provisions of the National Wool Act of 1954, as amended, of the support prices for wool and mohair under Commodity Credit Corporation's Wool and Mohair Payment Programs for the 1980 Marketing Year. The Payment Programs are intended to encourage the continued domestic production of wool and mohair at prices fair to both producers and consumers.

EFFECTIVE DATE: December 28, 1979.

ADDRESS: Emergency and Indemnity Programs Division, ASCS, U.S. Department of Agriculture, Room 4095 South Building, Washington, D.C. 20013

FOR FURTHER INFORMATION CONTACT: Gerald Schiermeyer 202–447–4428

SUPPLEMENTARY INFORMATION: The National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, payments or other operations. If payments are utilized as a means of price support, the payments shall be as the Secretary of Agriculture determines to be sufficient, when added to the national average price received by all producers, to give producers a national average return for the commodity equal to the support level.

The Wool Act, as amended by the Food and Agriculture Act of 1977, established the price support level for shorn wool for the marketing years 1977 through 1981 at 85 percent of an amount determined by multiplying 62 cents (the support price in 1965) by the ratio of (1) the average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years preceding the year in which such support price is being determined and announced, to (2) the average parity index for the three calendar years 1958, 1959, and 1960 and rounding the resulting amount to the nearest full cent.

The Wool Act also provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool and as the Secretary shall determine is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Further, the support price for mohair must be within a range of 15 percent above or below the comparable percentage of parity at which shorn wool is supported.

The regulations for the wool and mohair payment programs for the 1980 marketing year are published in 7 CFR Parts 1472 and 1468, respectively. The Wool Act and the regulations provide that the Secretary shall establish and, to the extent practicable, announce the support price levels for wool and mohair sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year.

Determination

Accordingly, pursuant to the authority conferred by section 703 of the National Wool Act of 1954, as amended, it is hereby determined that the support prices for shorn wool and mohair for the 1980 marketing year are $1.23 and $2.903 per pound, respectively. The support price for shorn wool, which is equal to 72.4 percent of the October 1979 parity price for wool, has been calculated in accordance with the formula contained in the Act. The support price for mohair, which is 72.4 percent of the October 1979 parity for mohair, has been established at a level, in relationship to the support prices for shorn wool, as determined to be necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. The support level for pulled wool will be determined after the National average market price of shorn wool for the 1980 marketing year is announced.

Note.—This determination has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A decision has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Emergency and Indemnity Programs Division, ASCS, USDA, Room 4095 South Building, Washington, D.C. 20013.

Signed at Washington, D.C. on December 19, 1979.

Jim Williams,

Acting Secretary of Agriculture.

[FR Doc. 79-39452 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-25-M

Federal Grain Inspection Service

Request for Public Comment on Proposed Grain Standardization Studies

AGENCY: Federal Grain Inspection Service.

ACTION: Request for Public Comment on Suggested Priorities for Proposed Grain Standardization Studies.

SUMMARY: The Federal Grain Inspection Service (FGIS) invites public comment on 9 proposed grain standardization studies for 1980. Comment is also invited concerning other grain standardization studies that may be desired.

COMMENT DATE: Written comments should be submitted by January 31, 1980.

ADDRESS: Written comments should be addressed to: USDA, FGIS, Compliance Division, Attention: Comments Section, Rm. 2405 Auditors Bldg., 1400 Independence Ave., S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: James L. Driscoll, Director, Standardization Division, FGIS, USDA, Richards-Gebuar Air Force Base, Building 221, Grandview, Missouri 64030. Telephone (816) 348-2861.

SUPPLEMENTARY INFORMATION: Under the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.)* and the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), the FGIS has the responsibility of studying the handling, weighing, grading, and transportation of grain, rice, beans, peas, lentils, hops, hay, straw, and processed grain products and establishing, amending, and revoking standards, procedures, or criteria for the commodities whenever the necessities of the trade may require.

Nine grain standardization studies have been proposed for 1980, as follows:

Field Testing the Alpha Content of Wheat. Alpha amylase is an enzyme produced in wheat kernels when they sprout. High levels of alpha amylase are unacceptable in certain wheat products such as noodles. Laboratory methods for measuring alpha amylase content have been developed. A study is proposed to determine the feasibility of measuring in grain inspection offices the alpa amylase content of wheat.

Uniform Requirements for the Special Grade "Weevily". The administrative allowances for live insects injurious to stored grain are not uniform for all grains. Concerns about insects in export grain have been expressed by the industry and foreign buyers. A study is proposed to investigate procedures to improve the special grade "weevily" through development of uniform allowances for live insects for all grains.

Certifying Dockage in Tenths of a Percent. Dockage in wheat, rye, and triticale is presently determined to the nearest 0.1 percent level but is certified in increments of 0.5 percent for wheat and triticale and in increments of 1.0 percent for rye. Importers of U.S. wheat favor the certification of dockage in increments of 0.1 percent. A study is proposed to determine the feasibility of certifying dockage in wheat, rye, and triticale in increments of 0.1 percent. The grains are similar in shape and size, and dockage in the grains is determined in a similar manner with similar equipment.

Special Grade for Organiz Acid-Treated Grain. The treatment of high-moisture grain, particularly corn, with certain organic acids reportedly retards spoilage of the grain in storage. Grain treated with organic acid is reportedly not acceptable for certain processing purposes. A study is proposed to determine the feasibility of developing (1) an inspection procedure for identifying organic acid-treated grain, and (2) a special grade for describing organic acid-treated grain.

Simplified Format for the United States Standards for Beans. The format for the standards for beans consists of a complex series of grade tables with numerous footnotes. Comments are requested to determine whether the grades, grade requirements, and grade designations for beans can be shown in a more simple and easily understood format.

Objective Testing Procedures for Hay. The standards for hay generally measure the physical properties of hay and not the nutrient properties. Objective methods have been developed for measuring certain nutrient properties in hay. A study is proposed to determine the feasibility of using the methods in the on-site inspection of hay.

The Need for Buckwheat Standards. The production of buckwheat is reportedly increasing. A study is proposed to determine the need for official standards for buckwheat.

The Need for Sunflower Standards. The production of sunflower has increased significantly. A study is proposed to determine the need for official standards for sunflower.

The Need for Rapeseed Standards. The production of rapeseed has increased. A study is proposed to determine the need for official standards for rapeseed.

The FGIS invites producers, elevator operators, merchandisers, processors, exporters, importers, inspection agencies, weighing agencies, and other interested individuals and groups to submit comments and views on the suggested priorities for the proposed studies. Comments and views are also invited on suggested priorities for other grain standardization studies that may be desired or needed by the trade. Data, documents, and other supportive information may be submitted with the comments and views.

(Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e))

(Secs. 203, 205, Pub. L. 79-733, 60 Stat. 1087, 1090 (7 U.S.C. 1622, 1624))

Done in Washington, D.C. on December 21, 1979.

D. R. Galliart,

Acting Administrator.

[FR Doc. 79-39574 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

National Forest System Advisory Committee; Meeting

The National Forest System Advisory Committee will meet at 9:00 a.m. on January 28 and 29 in Room 3840-46, South Agriculture Building, U.S. Department of Agriculture, 12th and Independence Avenue, S.W., Washington, D.C.

This Committee, comprised of 12 members from a broad spectrum of geographic and interest areas, advises the Secretary of Agriculture and the Forest Service on the planning and management of the National Forests. Topics will include updates on RPA and land management planning, the role of the National Forests in meeting future needs of America, landscape management as related to visual effects in harvesting timber, wood as an energy source, and research. Dr. M. Rupert Cutler, Assistant Secretary for Natural Resources and Environment, will chair the meeting.

The meeting will be open to the public. Persons who wish to attend should notify the Committee's Executive Secretary, Floyd J. Marita, National Forest System, USDA-Forest Service, P.O. Box 2417, Room 3021-S, Washington, D.C. 20013, telephone (202) 447-6341. Written statements may be filed with the Committee before or after the meeting.

Jerome A. Miles,

Deputy Chief.

[FR Doc. 79-39545 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

National Advisory Committee on Meat and Poultry Inspection; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on January 16, 1980, beginning at 9:00 a.m., in Conference Room "B" of the Departmental Auditorium, 12th and Constitution Avenue, NW., Washington, DC.

The purpose of the Committee is to advise the Secretary of Agriculture regarding issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a)(4) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, and 661(a)(4)) and sections 5(a)(4), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(4), 457(b), and 460(e)). The meeting will include a discussion of the following topics: Federal-State programs (funding, legislation, State plant reviews); status report on net weight regulation; mechanically deboned poultry; food labeling; voluntary quality control programs in meat and poultry plants; proteolytic enzymes; the status of the regulation of nitrite; the PCB contamination incident in the Western United States; and the Agency's plan for handling future contamination incidents.

The meeting is open to the public, but space is limited. Comments of interested persons may be filed with the Committee before or after the meeting, by sending them to Nancy F. Moody, Director, Executive Secretariat, Room 335-E, Administration Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, (202) 447-3002.

Done at Washington, DC, on December 21, 1979.

Donald L. Houston,

Vice Chairman.

[FR Doc. 79-39725 Filed 12-27-79; 8:45 am]

BILLING CODE 3410-DM-M

CIVIL AERONAUTICS BOARD

[Order 79-12-113; Docket 37020]

Intra-Alaska Service Investigation; Order on Motions To Consolidate

Issued under delegated authority December 19, 1979.

Motions to Consolidate have been filed by Delta Development Corporation d/b/a Western Yukon Air (Yukon), Great Northern Airlines, Inc. (Northern), Transamerica Airlines, Inc. (Transamerica), and Polar Airways, Inc. d/b/a Polar Airlines (Polar).[1] These motions seek the consolidation of the carriers' applications for certificates of public convenience and necessity in Dockets 37141, 37143, 37178, and 37210, respectively, into this proceeding. Sea Airmotive, Inc. has filed an answer which opposes these motions. Sea Airmotive contends that the motions were not timely filed and the applications involved are not sufficiently related to this proceeding.

Board Order 79-11-15 directed all motions to consolidate to be filed 20 days from the adoption of the order. Yukon and Northern both submitted their motion within the stated time limit. Transamerica and Polar, however, failed to meet the 20 day period. In regard to their delay, it is noted that neither Transamerica nor Polar were on the Order's service list, and therefore neither received a copy of the order. It is also noted that both motions were filed well before the scheduled prehearing conference date of January 8, 1980.

In instituting this proceeding, the Board recognized Wien Air Alaska's (Wien) claim that the grant of authority requested in this proceeding will cause diversion from Wien. The Board combined the applications for various Alaska route authority of Alaska Airlines, Inc., Northwest Airlines, Inc., and Sea Airmotive, Inc. to given Wien the chance to prove that the award of additional authority in more of its markets will create the results it alleges. The Board expects this proceeding to resolve the question whether the benefits of actual and potential competition outweigh the economic harm which would come to Wien.

Upon consideration of all motions and objections, it is found that the Yukon and Northern motions were timely filed. While Transamerica and Polar failed to meet the time requirement of the Board, it is found that the carriers' omission from the service list and their subsequent and prompt good faith filings constituted good cause under Section 302.12 of the Board's Rules of Practice. Thus, their motions will be considered timely. Finally, it is found that since some of the points to be served in the applications overlap with those already in issue in this proceeding, the applications sufficiently relate to scope of this case. Consolidation is, therefore, consistent with the Board's determination that a need for a hearing exists.[2] Further the Ashbacker doctrine requires consolidation of the involved carriers' applications.[3]

Accordingly, *it is ordered,* That:

The Motions to Consolidate filed by Delta Development Corporation d/b/a Western Yukon Air, Great Northern Airlines, Inc.,[4] Transamerica Airlines,

[1] Polar had earlier filed a petition for leave to intervene and this petition was granted.

[2] It is noted that all of the points to be served in the various applications are not identical to all of the points applied for by other applicants in this proceeding.

[3] *Ashbacker Radio Co.* v. *F.C.C.* 326 U.S. 327 (1945).

[4] The grant of Great Northern's Motion to Consolidate renders its petition for leave to intervene moot.

Inc., and Polar Airways, Inc. d/b/a Polar Airlines are granted and the applications of these carriers in Dockets 37141, 37143, 37178, and 37210, respectively, are consolidated into this proceeding.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the Federal Register.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-39647 Filed 12-27-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-12-117; Docket 36632]

Air Florida, Inc.; Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-12-117, Air Florida, Inc. Show Cause Proceeding, Docket 36632.

SUMMARY: The Board proposes to approve the following application: Applicant: Air Florida, Inc. Application Date: September 19, 1979. Docket: 36632. Authority Sought: Miami, Florida-Puerto Plata, Dominican Republic, nonstop or via the Bahama Islands.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than January 28, 1979 file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of the Dominican Republic. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed certificate.[1]

[1] The CAB will not enter a final order in Docket 36632 until a final decision is rendered in the *Caribbean Area Service Investigation*, Docket 30697.

ADDRESSES FOR OBJECTIONS: Docket 36632, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Air Florida, Inc., c/o Fisher Gelband & Sinick, Suite 440, 2020 K Street, N.W., Washington, D.C. 20006.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For further information, contact John D. Keppel, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5135.

By the Civil Aeronautics Board, December 20, 1979

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-39658 Filed 12-27-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective on the opening of business on November 13, 1979, The Cleveland Trust Company, Cleveland, Ohio, changed its name of AmeriTrust Company.

Dated: December 18, 1979.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 79-39547 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-15-M

U.S. Merchant Marine Academy Advisory Board; Public Meeting

Notice is hereby given of a meeting of the Advisory Board to the U.S. Merchant Marine Academy (the Board) on January 28, 1980, at 10 a.m. in the Board Room of Wiley Hall at the U.S. Merchant Marine Academy (the Academy), Kings Point, New York.

The Advisory Board to the Academy was established by the Secretary of Commerce under the authority of 46 U.S.C. 1126d to examine the course of instruction and the overall management of the Academy and advise the Assistant Secretary of Commerce for Maritime Affairs with respect thereto.

The Board consists of not more than seven members appointed by the Secretary of Commerce selected from segments of the maritime industry, labor, educational institutions, and other fields relating to the objectives of the Academy.

The Agenda for the meeting is:

1. Call meeting to order;
2. Approve minutes of the October 24, 1979, Board meeting;
3. Board members' reports;
4. Status report of the medical services for Midshipmen;
5. Status report on the use of Land Hall for Midshipmen pub;
6. Report on attrition rate of the Class of '83;
7. Report on the status of the '81 Budget;
8. Set date for next Board meeting.

This meeting is open to public observation and comment. Approximately 20 seats will be available for the public on a first come, first-served basis.

Copies of the minutes are available upon request.

Inquiries may be addressed to the Committee Control Officer, Arthur W. Friedber, Office of Maritime Labor and Training, Room 3069A, Main Commerce Building, telephone A/C 202/377-3018.

Dated: December 20, 1979.

So ordered by Assistant Secretary of Commerce for Maritime Affairs, Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 79-39548 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-15-M

National Oceanic and Atmospheric Administration

Fishery Conservation and Management; Transponders Aboard Foreign Fishing Vessels

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service.

ACTION: Notice concerning placement of transponders aboard foreign fishing vessels.

FOR FURTHER INFORMATION CONTACT: Morris M. Pallozzi, Enforcement Division, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634-7265.

SUPPLEMENTARY INFORMATION: The Fishery Conservation and Management Act of 1976 permits foreign fishing within the U.S. fishery conservation zone (FCZ) if such fishing is conducted in accordance with a valid and applicable permit, the provisions of a governing international fishery agreement (GIFA), and applicable regulations. All GIFAs include a binding commitment on the part of foreign nations, and the owners and operators

of foreign fishing vessels, to install and maintain transponders, or other position-fixing and identification equipment specified by the U.S. Coast Guard, on each fishing vessel.

The Coast Guard, in cooperation with the National Oceanic and Atmospheric Administration (NOAA), intends to conduct a test of the capabilities of transponders by placing a limited number of them aboard foreign fishing vessels fishing in the FCZ in the Northwest Atlantic Ocean. The transponders will be deployed with U.S. observers. They are designed to transmit an identity signal that will permit the Coast Guard to determine the position of those foreign fishing vessels which carry the device while in the FCZ. Other features include: (1) automatic collection and transmittal of air temperature; (2) and emergency switch to indicate distress requiring immediate assistance; and (3) other switches which may be used by an observer to transmit catch and other data.

The test is scheduled to begin on or about January 1, 1980, and will terminate approximately 120 days later. The purpose of the test is to verify the accuracy of position determinations and the reliability of the data transmitted. If the test proves satisfactory, transponders may be deployed in greater numbers aboard foreign fishing vessels. The Coast Guard and National Marine Fisheries Service will employ identification, position, and weather data for improved patrol planning and other enforcement purposes; NOAA will use weather data to enhance its prediction capability; and National Marine Fisheries Service will use catch and other data from observers to improve compliance with catch limitations.

Authority: 16 U.S.C. 1801, *et seq.*

Signed at Washington, D.C., this 20th day of December, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-39659 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), will meet to discuss: Reports of the Groundfish and Scallop Oversight (O/S) Committees; A presentation on Computer Modelling; The new Data Confidentiality Regulations; A presentation on Enforcement Practices and Capabilities; Joint Ventures; Law, Regulation and Procedures; and other Council business.

DATES: The meeting will convene on Wednesday, January 16, 1980, at approximately 10 a.m. and will adjourn on Thursday, January 17, 1980, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at King's Grant, Route 128 at Trask Lane, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, Telephone: (617) 535-5450.

Dated: December 20, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-39330 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Meeting

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of Intent to Prepare an Enviromental Impact Statement and Conduct a Scoping Meeting.

SUMMARY: The New England Fishery Management Council announces a meeting to discuss the preparation of a Fishery Management Plan (FMP) and associated Environmental Impact Statement (EIS) for American lobster. This Scoping Meeting is part of the process for: (1) determining the range of issues to be considered by the Council; and (2) identifying those issues significant to the development and implementation of the FMP/EIS. The purposes of the scoping process are discussed in the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

DATES: The meeting will convene on Monday, January 14, 1980, beginning at 10:00 a.m.

ADDRESS: The meeting will take place at the Holiday Inn, Routes 1 and 128, Peabody, Massachusetts 01960.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, One Newbury Street, Peabody Office Building, Peabody, MA 01960, Phone: (617) 535-5450.

SUPPLEMENTARY INFORMATION: At its meeting on November 8, 1979 in Danvers, Massachusetts, the New England Fishery Management Council (Council) adopted the following objective for management of the American lobster resource:

> The objective of the lobster FMP shall be to manage the total American lobster (*Homarus americanus*) resources so as to minimize the possibility of recruitment failure when and where possible. In its efforts to accomplish this objective, the management effort should consider the need to minimize social, cultural, and economic dislocations which may result from provisions of this FMP.

In adopting this objective, the Council has recognized the relevance of efforts by the Northeast Marine Fisheries Board relating to American lobster under the State/Federal Fisheries Management Program. The State/Federal program for lobster began in 1972 and culminated in October, 1978, upon adoption by the Board of a plan for management of the lobster fishery resources. On the basis that lobster populations of the northwestern Atlantic area comprise a single stock, the plan adopted by the Northeast Marine Fisheries Board addressed problems of lobster management within both state territorial waters and the United States Fishery Conservation Zone (FCZ). The Board referred the plan to the lobster producing states for use as a basis for management of the fisheries within state waters and to the New England and Mid-Atlantic Fishery Management Councils for use as a basis for development of an FMP for the FCZ under authority of the Fishery Conservation and Management Act of 1976, as amended (Act). Subsequently, the Assistant Administrator for Fisheries/NOAA, under authority of Section 304(f) of the Act, designated the New England Fishery Management Council as the lead Council for preparation of an FMP for American lobster. The New England Fishery Management Council intends to use the plan developed by the Northeast Marine Fisheries Board as a basis for preparation of the FMP and associated EIS.

This notice of intent initiates the process of development of an FMP and associated EIS prescribed by NOAA Directive 02-10 (44 FR 60779). This Directive establishes NOAA policy and procedures for implementing the National Environmental Policy Act in compliance with CEQ's regulations. The Council invites the participation of all interested Federal, State, and local

agencies, fishing industry organizations, fishermen, fish processors, consumers of fishery products, environmental organizations, and any other interested persons in this process. Public participation will begin with the Scoping Meeting on January 14, 1980. Alternative actions to implement the management objective adopted on November 8, 1979, as well as methods for analyzing environmental and economic impacts of these alternatives will be discussed at the Scoping meeting.

Once the Scoping process is completed, the Council will prepare a draft FMP and draft EIS for public review and comment. At that time, public hearings will be held at locations throughout the northwestern Altantic coast area.

Dated: December 21, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-39722 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From Taiwan, Effective on January 1, 1980

December 21, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products imported from Taiwan, effective on January 1, 1980.

SUMMARY: The Bilateral Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan establishes specific ceilings for cotton and man-made fiber textile products in Categories 313, 331, 333/334/335, 338/339, 340, 341, 347/348, 445/446, 633/634/635, 638, 639, 640, 641, 643/644, 647, and 648 during the agreement year which begins on January 1, 1980 and extends through December 31, 1980. The agreement also provides consultation levels for certain categories of cotton, wool and man-made fiber textile products, such as Categories 342, 363, 442, 444, 469, 631, 659 and 669, which are not subject to specific ceilings and which may be increased upon agreement between the two governments. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1980 and extends through December 31, 1980, in excess of the designated levels. The sublimit for fish nets in Category 669 (only T.S.U.S.A. 355.4560) has been reduced to account for 1977 and 1978 overshipments totaling 23,392 pounds.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Shirley Hargrove, Trade and Industry Assistant, U.S. Department of Commerce, Office of Textiles, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 21, 1979

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Taiwan, in excess of the indicated levels of restraint:

Category	12-month level of restraint
313	43,812,993 square yards.
331	454,671 dozen pairs.
333/334/335	100,615 dozen of which not more than 52,693 dozen shall be in Cat. 333/334 and not more than 63,014 dozen shall be in Cat. 335
338/339	490,517 dozen.
340	619,563 dozen.
341	358,695 dozen.
342	39,226 dozen.
347/348	832,466 dozen of which not more than 408,851 dozen shall be in Cat. 347 and not more than 631,732 dozen shall be in Cat. 348.
363	4,000,000 numbers.
442	5,556 dozen.
444	1,852 dozen.
445/446	123,795 dozen.
469	50,000 pounds.
631	2,109,286 dozen pairs.
633/634/635	1,377,873 dozen of which not more than 908,730 dozen shall be in Cat. 633/634 and not more than 675,824 dozen shall be in Cat. 635.
643/644	136,719 dozen of which not more than 72,290 dozen shall be in Cat. 643 and not more than 78,101 dozen shall be in Cat. 644.
638	1,519,339 dozen.
639	5,033,179 dozen.
640	3,097,170 dozen.
641	657,303 dozen.
647	1,815,414 dozen.
648	2,999,004 dozen.
659	9,187,500 pounds of which not more than 2,725,000 pounds shall be in T.S.U.S.A. numbers 703.1000 and 703.0500; not more than 1,700,000 pounds shall be in T.S.U.S.A. numbers 380.0429, 380.8163, 382.0449 and 382.7877 of which not more than 225,000 pounds shall be in T.S.U.S.A. numbers 380.0429 and 380.8163 and not more than 1,600,000 pounds shall be in T.S.U.S.A. numbers 382.0449 and 382.7877.
669	1,282,051 pounds of which not more than 58,018 pounds shall be in T.S.U.S.A. number 355.4560.

In carrying out this directive entries of texile products in the foregoing categories, except Categories 342, 363, 442, 444 and 469, which have been exported to the United States prior to January 1, 1980, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such good during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 342, 363, 442, 444 and 469 which have been exported prior to January 1, 1980 shall not be subject to this directive.

Textile products in Categories 342, 363, 442, 44 and 469 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of June 8, 1978, as amended, which provide in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated

percentages; (2) these same levels may be increased for carryover and carryforward up to 11 precent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended by January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton, wool and man-made fiber textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-39511 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Levels for Certain Cotton, Wool, and Man-Made Fiber Textile Products From India

Effective: January 1, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products imported from India, effective on January 1, 1980.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India establishes, among other things, ceilings for cotton, wool and man-made fiber textile products in Categories 330–369, 431–469, and 630–669, as a group, and individual Categories 336, 338/339/340, 341 and 347/348 during the agreement year which begins on January 1, 1980 and extends through December 31, 1980. The agreement also provides consultation levels for categories, such as Categories 335, 342, 359, 363, 369, 410, 447, 636, 640, 641, and 666, which are not subject to specific ceilings and which may be increased during the year upon agreement between the two governments. In the letter published below the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of textile products in the foregoing categories, produced or manufactured in India and exported during the twelve-month period which begins on January 1, 1980, in excess of the designated levels. Pending conclusion of consultations with the Government of India, which have been requested pursuant to paragraph 17 of the bilateral agreement, apparel products in Categories 330–359, 431–459 and 630–659, which are certified by the elephant certification, shall be permitted entry up to a level of 3 million dozen during the twelve-month period beginning on January 1, 1980.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 21, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1980 and for the twelve-month period extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in India, in excess of the indicated twelve-month levels of restraint:

Category	12-mo level of restraint
330–369, 431–469 and 630–669	40,532,895 square yards equivalent.
335	16,949 dozen.
342	39,326 dozen.
359	152,174 pounds.
363	20,000,000 numbers.
369	2,608,696 pounds.
410	100,000 square yards.
447	5,556 dozen.
636	15,453 dozen.
640	29,167 dozen.
641	48,276 dozen.
666	256,410 pounds.

Floor coverings in Categories 369 (only T.S.U.S.A. numbers 360.7600 and 361.5420), 465 (only T.S.U.S.A. numbers 360.0500, 360.1000, 360.1500, 361.4200 and 361.4400) and 665 (only T.S.U.S.A. number 360.7800) shall not be subject to this directive.

Apparel products in Categories 330–359, 431–459 and 630–659 which are certified by the elephant certification shall be permitted entry up to a level of 3 million dozen for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 and shall not be charged to the foregoing levels.

You are further directed to prohibit, effective on January 1, 1980 and for the twelve-month period extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 336, 338/339/340, 341 and 347/348, produced or manufactured in India, in excess of the following levels of restraint:

Category	12-mo level of restraint
336	192,560 dozen.
338/339/340	975,340 dozen.
341	2,134,655 dozen.
347/348	117,028 dozen.

Cotton textile products in Categories 336, 338/339/340, 341 and 347/348 are also chargeable to the level of restrain established for Categories 330–369, 431–469 and 630–669, as a group, unless accompanied by an elephant certification in which case they shall be chargeable to the level of 3 million dozen established for apparel products in Categories 330–359, 431–459 and 630–669.

In carrying out this directive, cotton, wool and man-made fiber textile products in Categories 330–369, 431–469 and 630–669, as a group, and individual Categories 335, 338/339/340, 341, 342, 347/348, 359, 447, 641 and 666, including products accompanied by the elephant certification, produced or manufactured in India and exported to the United States prior to January 1, 1980, shall, to the extent of any unfilled balances, be

charged against the levels of retraint established for such goods during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Cotton, wool and man-made fiber textile products in Categories 363, 369, 410, 636, and 640, exported prior to January 1, 1980 shall not be subject to this directive.

Cotton, wool and man-made fiber textile products in Categories 363, 369, 410, 636 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of December 30, 1977, as amended, between the Governments of the United States and India which provide, in part, that: (1) within the aggregate, group limits may be exceeded by designated percentages; (2) specific limits may be exceeded by various percentages subject to various provisions of the agreement; (3) consultation levels may be increased upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843))

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of India and with respect to imports of cotton, wool and man-made fiber textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-39540 Filed 12-27-79; 8:45 am]

BILLING CODE 3510-25-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Toxicological Advisory Board.

SUMMARY: This notice announces a meeting of the Toxicological Advisory Board on Tuesday, January 22, 1980, from 8:30 a.m. to 5:00 p.m. and Wednesday, January 23, 1980, from 8:30 a.m. to 2:30 p.m. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Catherine Bolger, Office of the Secretary, Suite 300, 1111 18th Street, NW., Washington, D.C. 20207 (202) 634-7700.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is a newly-established nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid treatment labeling. In addition, the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act and recommends revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978, under the authority of Section 10 of the 1978 CPSC Authorization Act (Pub. L. 95-631). Both days of the meeting will be devoted to a review of petroleum distillates, petrochemicals and similar type hydrocarbon substances for which laveling advice appears in the CPSC Labeling Guide. For specific information on the format of the agenda contact Catherine Bolger at the address above.

The two-day meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the Toxicological Advisory Board should notify the Office of the Secretary (see address above) by January 11, 1980.

The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requesters will be informed of the decision before the meeting.

Dated: December 20, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-39391 Filed 12-27-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Symposium. This meeting will be held on 24 January 1980 at the Quality Inn, Pentagon City, 300 Army Navy Drive, Arlington, VA, and will convene at 0900 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DOD 4500.34-R), and the handling of other matters of mutual interest relating to the movement and/or storage of household goods and unaccompanied baggage, as well as proposed changes and innovations in the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should submit them in writing to the Commander, Military Traffic Management Command, ATTN: MT-PPM, Washington, DC 20315. Topics to be discussed should be received on or before 17 January 1980.

Dated: December, 21 1979.

John J. Durant,

Colonel, GS, Director of Personal Property.

[FR Doc. 79-39302 Filed 12-27-79; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Environmental Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Title: Environmental Advisory Committee.
Date and Time: Thursday, January 17, 1980 and Friday, January 18, 1980—9:00 a.m.
Place: Department of Energy, 1000 Independence Avenue, S.W., Forrestal Building, Room 4A-098, Washington, D.C.
Contract: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Room 8G087, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone, 202-252-5187.
Purpose of Committee: To advise the Department of Energy on the overall activities which pertain to the goals of restoring, protecting and enhancing environmental quality and assuring public health and safety.
Tentative Agenda:

Thursday, January 17, 1980

9:00 a.m. to 12:00

Report by Chairman.
Presentation by Ruth Clusen, Assistant Secretary, Environment.
Report of results of Delphi Associates evaluation.
Report of Subcommittee on Demand Projections.

1:30 p.m. to 4:30 p.m.

Presentation C02 problem: Dr. Don G. Scroggin, Energy Policy Staff, Council on Environmental Quality. David H. Slade, Mgr., DOE C02 and Climate Research Program.
Discussion by Messrs. Gibson and Browning (committee members) of suggestions on how Committee should approach C02 issue.
Committee Discussion of C02 issue.
Public comment (10 minute rule).

Friday, January 18, 1980

9:00 a.m. to 12:00

Further Committee discussion on C02.
Discussion by Dr. Slack of draft DOE paper on Environmental Impacts of Synthetic Fuels.
Committee discussion of procedures for dealing with draft DOE paper.
Committee discussion of draft DOE paper re Coal Environmental Issues Fact Book (if available).

1:30 p.m. to 4:30 p.m.

General Discussion/Committee Business.
Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. the Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on December 21, 1979.

Georgia Hildreth,

Director Advisory Committee Management.

[FR Doc. 79-39648 Filed 12-27-79; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 79-33-LNG]

Columbia LNG Corp.; Application for Authority To Change the Point of Importation of Liquefied Natural Gas and for Approval of Related Increase in Transportation Costs Pursuant to Section 3 of the Natural Gas Act

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of application and invitation to submit petitions to intervene in the proceeding.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of an application by Columbia LNG Corporation (Columbia LNG), in ERA Docket No. 79-33-LNG, for authorization pursuant to Section 3 of the Natural Gas Act to change the point of importation with respect to a portion of the volumes of LNG which Columbia LNG previously has been authorized to import at Cove Point, Maryland, to a point of importation at Elba Island, Georgia, during the period from November 1, 1979, through March 31, 1980; and to pay the related increase in the transportation costs for such LNG deliveries to Elba Island. Pursuant to Section 7(c) of the Natural Gas Act, Columbia LNG has filed an application with the Federal Energy Regulatory Commission in FERC Docket No. CP80-68 for authorization to resell the regasified LNG received during such period to Columbia Gas Transmission Corporation and to recover the related costs of the proposed transaction. Petitions to intervene are invited.

DATES: Petitions to intervene are due on or before January 7, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Finn K. Neilsen, Director, Import/Export Division, 2000 M Street, N.W., Room 4126, Washington, D.C. 20461, telephone (202) 254-8202. Mr. Martin S. Kaufman, Deputy Assistant General Counsel for International Trade and Emergency Preparedness, 1000 Independence Ave., S.W., Forrestal Building, Room 5E084, Washington, D.C. 20585, telephone (202) 252-2918.

SUPPLEMENTARY INFORMATION: In an application filed on November 9, 1979, Columbia LNG states that due to an event of force majeure at facilities at Cove Point, Maryland (an explosion which temporarily incapacitated the LNG terminal facility), it is unable to receive and regasify the previously authorized quantities of LNG which El Paso Algeria Corporation (El Paso Algeria) had scheduled for delivery at Cove Point. In order to restore its LNG supply Columbia LNG proposes that El Paso Algeria deliver the LNG to the receiving terminal of Southern Energy Company (Southern Energy) at Elba Island, pursuant to a Cargo Sharing Agreement between Columbia LNG and Southern Energy. Columbia states that deliveries to Elba Island will occur from November 1, 1979, to March 31, 1980, to the extent the Cove Point facilities cannot be used.

Southern Energy is to receive, store, regasify and deliver the regasified LNG to Southern Natural Gas Company (Southern Natural) for Columbia LNG's account pursuant to an LNG Terminalling Agreement between Columbia LNG and Southern Energy. For this service, Columbia LNG has agreed to pay Southern Energy a charge of $.04 per MMBtu of regasified LNG delivered to Southern natural at Elba Island for the account of Columbia LNG. In addition to this charge Columbia LNG will provide the volumes of LNG necessary for regasification of its share of the LNG received by Southern Energy.

Columbia LNG is obligated to pay the same F.O.B. origin price of the LNG for deliveries to either Elba Island and/or Cove Point, and pursuant to the authorization sought by Columbia LNG, would incur the transportation costs to Elba Island for quantities of LNG delivered to Elba Island for its account. The interim F.O.B. price authorized by ERA in its Docket No. 79-14-LNG (DOE/ERA Opinion and Order Number Seven, dated August 22, 1979) is $1.15 per MMBtu. The transportation rate elements in the authorized import ceiling prices at Cove Point and Elba Island are 106.16¢ and 116.23¢ per MMBtu respectively. Columbia states that the current actual transportation costs are 102.33¢ per MMBtu at Cove Point, and 109.24¢ per MMBtu at Elba Island.

Other Information

The ERA invites petitions for intervention in this proceeding. Such petitions are to be filed with the Economic Regulatory Administration, Room 4126, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on January 7, 1980.

Any person wishing to become a party to this proceeding or to participate as a party in any hearing which may be convened therein must file a petition to intervene. Any person desiring to make any protest with reference to the application should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

Copies of this application are available for public inspection and copying in Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 20, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations Economic Regulatory Administration.

[FR Doc. 79-39748 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP80-94]

Columbia Gas Transmission Corp.; Notice of Application

December 19, 1979.

Take notice that on November 19, 1979, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP80-94 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of 154 interconnecting tap facilities to provide additional points of delivery to existing wholesale customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the following new points of delivery for the following wholesale customers:

(1) Columbia Gas of Kentucky, Inc., 9 taps for residential service, 3 taps for commercial service—estimated annual usage of 2,175 Mcf.
(2) Columbia Gas of Maryland, Inc., 3 taps for residential service, 1 tap for commercial service—estimated annual usage of 1,642 Mcf.
(3) Columbia Gas of Ohio, Inc., 88 taps for residential service, 3 taps for commercial service, 2 taps for combined residential and commercial service—estimated annual usage of 74,625 Mcf.
(4) Columbia Gas of Pennsylvania, Inc., 7 taps for residential service—estimated annual usage of 1,050 Mcf.
(5) Columbia Gas of Virginia, Inc, 7 taps for residential service—estimated annual usage of 1,050 Mcf.
(6) Columbia Gas of West Virginia, Inc., 31 taps for residential service—estimated annual usage of 4,650 Mcf.

Applicant states further that it does not propose to increase its currently authorized level of sales.

It is stated that the total cost of the interconnections is estimated to be $46,350, which would be financed by internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39520 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-121]

Columbia Gas Transmission Corp. and Consolidated Gas Supply Corp.; Notice of Application

December 19, 1979.

Take notice that on December 4, 1979, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP80-121 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas and the construction and operation of related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they have entered into an exchange agreement dated August 27, 1979, whereby Columbia would provide up to 25,000 dekatherms equivalent of gas per day from its reserves in Wyoming County, New York, for delivery to mutually agreeable points on Consolidated's Lines 14, 24, 554 and 546 in Wyoming County, New York. It is said that the connections would be constructed under a gas supply budget-type authorization or pursuant to an application to be filed.

It is stated that Consolidated would redeliver gas to Columbia at an existing interconnection between Columbia's Line A-5 and Consolidated's Lines 1 and 31 near the Town of Horseheads, Chemung County, New York, or at a new interconnection to be constructed between Columbia's Line 10120 and Consolidated's Lines 25 and 35 in North Sewickley Township, Beaver County, Pennsylvania. It is further stated that the exchange would be on a gas-for-gas basis with Consolidated retaining 2.68

percent of the quantity delivered by Columbia, as a fuel retention charge, and that balancing would be, as nearly as possible, on a monthly basis.

Applicants state that Columbia proposes to construct an interconnecting pipeline tap facility at the point of receipt from Consolidated at Beaver Junction, Pennsylvania, at an estimated cost of $4,000, which cost would be financed from funds generated internally.

It is further stated that Consolidated proposes to construct: (1) three interconnecting tap facilities; (2) Beaver Junction Measuring Station; (3) modifications to Horseheads Measuring Station and (4) modifications to 11 existing measuring stations, all at a cost of $370,678, which cost would be reimbursed by Columbia from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39521 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. E-9002 and ER76-122]

Commonwealth Edison Co.; Notice of Compliance Filing

December 18, 1979.

The filing Company submits the following:

Take notice that Commonwealth Edison Company on November 13, 1979, tendered for filing, in compliance with Opinion No. 63 of the Federal Energy Regulatory Commission issued in this Docket on September 14, 1979, Revised FERC Electric Tariffs, Rate 78, Wholesale Service, and Rider 20, Fuel Adjustment Applicable to Rate 78, along with certain other material.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 4, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39522 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-289]

El Paso Natural Gas Co.; Notice of Amendment

December 19, 1979.

Take notice that on November 26, 1979, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP77-289 an amendment to its application filed March 11, 1977 [1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the utilization of the Clay Basin interim storage arrangements to pay back Southern California Gas Company (So Cal) and Pacific Gas and Electric Company (PG and E) natural gas diverted to serve Applicant's east-of-California (EOC) high priority customers during the 1979-80 winter season, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant states that by orders issued March 17, 1977, September 30, 1977, and July 3, 1978, as amended, in *Mountain Fuel Resources, Inc., et al.*, Docket No. CP76-285, *et al.*, the Commission has authorized the construction and operation of certain facilities and the interim utilization, through September 30, 1980, of a portion of the storage capacity of the Clay Basin Storage Field located in Daggett County, Utah, all for the purpose of assisting Applicant in protecting Priority 1 and 2 service to its EOC customers. The Clay Basin arrangements have been utilized by Applicant for the protection of EOC Priority 1 and 2 service during the 1977-78 and 1978-79 winter seasons, and, it is stated, would again be utilized to assist Applicant in providing such protection during the 1979-80 winter season.

It is further stated that Applicant has recently entered into arrangements (California back-off arrangements) with its California customers, So Cal and PG and E, designed to assist Applicant in further protecting peak-day service to its EOC customers' Priority 1 and 2 requirements during the 1979-80 winter season. It is stated that these arrangements would permit Applicant to divert from its otherwise scheduled deliveries to So Cal and PG and E during the 1979-80 winter season such quantities of natural gas, not to exceed 200,000 Mcf daily, nor a cumulative net total of 2,000,000 Mcf at anyone time, from each California customer, as may be required for use in protecting peak-day EOC Priority 1 and 2 service. It is said that such diversions from otherwise scheduled deliveries to So Cal and/or PG and E would be required only on those peak days during the 1979-80 winter season when the quantities of natural gas otherwise available for service to Applicant's customers, as augmented by the maximum volumes available from withdrawals from Applicant's Rhodes Reservoir Storage Project and through the Clay Basin arrangements, are not alone sufficient to provide full service to the EOC customers' Priority 1 and 2 requirements.

Applicant states that the California back-off arrangements require that the volumes diverted from the California customers for peak-day EOC Priority 1 and 2 service protection would be restored to those customers as soon as operationally possible. It is stated that

[1] This proceeding was commenced before the Federal Power Commission. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

the pay-back of diverted volumes would be accomplished first with such volumes of natural gas as would be made available through withdrawals from Applicant's Rhodes Reservoir. It is asserted that to the extent that withdrawals from Rhodes Reservoir are not sufficient to accomplish pay-back gas, additional volumes would be made available for that purpose through utilization of the Clay Basin arrangement.

Applicant states that the purpose for the request that its existing authorization in connection with the Clay Basin arrangements be amended is to enable it to withdraw volumes for pay-back under the California back-off arrangements. It is further stated that in order to withdraw volumes for pay-back under the said arrangement, Applicant would be required to reduce its otherwise scheduled deliveries to its three largest EOC distributor customers in off-peak periods during the 1979–80 winter season so that natural gas so diverted may be delivered instead to the California customers. It is asserted that such off-peak diversions would only occur to the extent that the volumes of natural gas then available through withdrawals from Rhodes Reservoir are insufficient to accomplish pay-back. It is further said that the three largest EOC distributor customers would be kept whole in the same manner as under the presently authorized Clay Basin arrangements through the contemporaneous delivery by Applicant and sale by Clay Basin Storage Company to those customers of equivalent volumes of Clay Basin Storage Company's gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39523 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-349]

Florida Gas Transmission Co.; Notice of Amendment

December 19, 1979.

Take notice that on October 29, 1979 [1], Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP77–349 an amendment to its application for a certificate of public convenience and necessity in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of additional quantities of natural gas for the account of Southern Natural Gas Company (Southern) from Vermilion Parish, Louisiana, to Washington Parish, Louisiana, or any other authorized point of interconnection which may be mutually agreeable to FGT and Southern, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

FGT states that by temporary certificate issued August 3, 1977, in the instant docket, it was authorized to transport up to 100,000 million Btu equivalent of gas per day for Southern from Vermilion Parish, Louisiana, to Washington Parish, Louisiana. FGT requests herein that said authorization be amended so as to authorize the transportation of an additional 2,000 Mcf of natural gas per day from Vermilion Parish to Washington Parish, Louisiana. It is stated that said additional gas volume would be purchased by Southern in East Cameron Block 38. It is further stated that no other terms of the March 15, 1977, transportation agreement would be changed by the implementation of this proposal.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39524 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-99]

Kansas-Nebraska Natural Gas Company, Inc.; Notice of Application

December 19, 1979.

Take notice that on November 21, 1979, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), P.O. Box 608, Hastings, Nebraska 68901, filed in Docket No. CP80–99 and application pursuant to Section 7 of the Natural Gas Act and Sections 157.7(b), 157.7(e) and 157.7(g) of the Regulations thereunder (18 CFR 157.7(b), (e) and (g)), for (1) a certificate of public convenience and necessity authorizing the construction, for an indefinite period commencing January 1, 1980, and operation of facilities to take into its certificated system supplies of natural gas; (2) permission and approval to abandon, during the calendar year 1980, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers; and (3) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon various field compression and related metering and appurtenant facilities, during the calendar year 1980, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application, pursuant to Section 157.7(b), is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant, and supplies of natural gas from Applicant's own production as acquired for system supply under Sections 311 or 312 of the Natural Gas Policy Act of 1978. Applicant states that the total cost of such facilities would not

[1] The application was initially tendered for filing on October 29, 1979; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until December 3, 1979; thus, filing was not completed until the latter date.

exceed $2,500,000 with no single onshore project to exceed $20,000,000, for each calendar year.

The stated purpose of this budget-type application, pursuant to Section 157.7(e), is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales measuring, regulating, and related facilities only when deliveries to any one direct sales customer would not have exceeded 100,000 Mcf of natural gas during the last year of service.

The stated purpose of this budget-type application, pursuant to Section 157.7(g), is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application. Applicant states that the total cost of the proposed construction and abandonment under Section 157.7(g) would not exceed $2,000,000 with no single project to exceed $500,000.

The costs involved, it is stated, would be financed from current working capital or from interim bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if not petiton 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 and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petiton 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. 79-39525 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-110]

Locust Ridge Gas Co.; Notice of Application

December 19, 1979.

Take notice that on November 29, 1979, Locust Ridge Gas Company (Applicant), 4100 Southwest Freeway, Suite 320, Houston, Texas 77027, filed in Docket No. CP80-110 an application pursuant to Section 7 of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)), for a certificate of public convenience and necessity authorizing the construction, and for permission and approval to abandon, during the 12-month period commencing January 1, 1980, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment under Section 157.7(g) would not exceed $935,000 which Applicant would finance through use of internally generated funds and borrowing. Applicant requests a waiver of the cost limitation prescribed in Section 157.7(g) predicated upon the climbing inflation which has eroded the usefulness of the budget authorization.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39526 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-111]

Locust Ridge Gas Co., Notice of Application

December 19, 1979.

Take notice that on November 29, 1979, Locust Ridge Gas Company (Applicant), 4100 Southwest Freeway, Suite 320, Houston, Texas 77027, filed in Docket No. CP80-111 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)), for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1980, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous

rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant.

Applicant requests waiver of the cost limitations prescribed by Section 157.7(c)(2) to permit a total cost limitation not exceeding $289,640. It is indicated that the waiver is required because of the increase in construction costs since the limitation was prescribed by the Commission's Regulations. Applicant further states that the cost of the proposed facilities would be financed from internally-generated funds and borrowing.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39527 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-85]

National Fuel Gas Supply Corp.; Notice of Application

December 19, 1979.

Take notice that on November 14, 1979, National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York 14240, filed in Docket No. CP80-85 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of gas delivery facilities, (2) the establishment of new delivery points and (3) the transportation and exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant request blanket authorization to construct and operate facilities for the delivery and exchange of gas at various points on existing distribution transmission facilities of its affiliate, National Fuel Gas Distribution Corporation (Distribution) over a three-year period. It is stated that Applicant would receive gas from local independent producers or for the account of pipeline and distributor companies and in turn would deliver such gas to Distribution as part of its existing service obligation to Distribution. It is stated further that all gas purchased by Applicant would become part of its general system supply and that the major portion of gas recieved would come from producers, but that some of the gas would be received subject to an obligation to return volumes pursuant to exchange and exchange-transportation agreements.

Applicant proposes to construct and operate tap, measurements, and related facilities at various points on Distribution's existing facilities where it would received gas from local producers and then deliver same to Distribution in partial fulfillment of Applicant's existing service obligations.

Applicant further proposes to implement an exchange agreement with Columbia Gas Transmission Corporation (Columbia) by establishing new delivery points to Distribution, and to receive a portion of gas deliveries from Consolidated Gas Supply Corporation (Consolidated) and Columbia at new delivery points for the sale and delivery of such gas to Distribution at new delivery points. It is stated that some of the exchange gas from Columbia would be delivered at existing points of delivery established previously by Columbia.

Applicant further requests blanket authorization to tap pipeline facilities under an October 1979 agreement pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) between Applicant, Consolidated, Elizabethtown Gas Company (Elizabethtown) and New Jersey Natural Gas Company (New Jersey Natural), whereby gas would be delivered to Applicant which Applicant would sell and deliver to Distribution at new delivery points on Distribution's distribution transmission system. Applicant asserts that the construction of such taps on a distribution system are not permitted under the NGPA.

Applicant states that the presently known points of delivery to be constructed for delivery to Distribution are: (1) from Columbia at Distribution's Line HM-190 in Springboro, Crawford County, Pennsylvania, (2) from Consolidated at Cream Hill Road, Town of Fremont, Steuben County, New York, and to Distribution's Line PY-2 in Concord, Erie County, New York, and (3) with Elizabethtown and New Jersey Natural at Black Street Road, Genesee County, New York, and on Distribution's Line WM-2 in Livingston County, New York.

The estimated costs are said to be not more than $10,000 for each delivery point with not more than $2,000,000 annually and not more than $5,000,000 over the three-year term of the proposal. It is stated that the construction would be financed with internally generated funds and/or interim short-term bank loans.

Applicant states that its proposal herein would enable it to provide new supplies of natural gas to its interstate pipeline system in order to offset contemplated diminishing supplies available to serve existing markets.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion belives 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.

Kennth F. Plumb,

Secretary.

[DR Doc. 79-39528 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-116]

Natural Gas Pipeline Company of America; Notice of Application

December 19, 1979.

Take notice that on December 3, 1979, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP80-116 and application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delayed exchange of gas between Applicant and Mountain Fuel Supply Company (Mountain Fuel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into transportation agreements with Mountain Fuel dated October 3, 1978 (agreement No. 1), and September 27, 1979 (agreement No. 2), whereby Mountain Fuel has agreed to transport up to 20,000 Mcf of natural gas per day for Applicant from the Bonanza Area, Uintah County, Utah, and up to 30,000 Mcf per day from an area of interest including portions of the Overthrust Belt in northeastern Utah and southwestern Wyoming, respectively.

It is stated that both agreements require redelivery by Mountain Fuel to Colorado Interstate Gas Company (CIG) for Applicant's account at an existing interconnection between Mountain Fuel and CIG in Sweetwater County, Wyoming, pursuant to an agreement dated December 29, 1978, between Applicant and CIG. It is further stated that CIG has informed Applicant that a capacity constraint on its transmission system may render it unable to accept or deliver all the gas delivered by Mountain Fuel for Applicant's account.

It is said that due to the possible capacity constraints on CIG's system, Applicant and Mountain Fuel have entered into a delayed exchange agreement dated September 28, 1979, which provides for Mountain Fuel to retain for its own use any volumes of gas tendered by Applicant pursuant to agreement No. 1 and agreement No. 2 during the November through March periods of 1979-80, 1980-81, and 1981-82 which cannot be accepted by CIG, and that Mountain Fuel would redeliver thermally equivalent volumes to CIG for the account of Applicant on a best-efforts basis during the April through October periods of 1980, 1981 and 1982.

It is further stated that the charges by and to Applicant would be based on the price of new natural gas under Section 102 of the Natural Gas Policy Act of 1978 on the date of receipt by Mountain Fuel or Applicant, and that compression, if necessary, for Mountain Fuel to make redelivery to CIG, would be 5.0 cents per Mcf plus a proportionate share of the compressor fuel. The term of the delayed exchange agreement in said to be until October 31, 1982, but would be extended until all exchange gas thereunder is redelivered to CIG for Applicant's account.

Applicant states that it would classify costs associated with the proposed exchange in Account No. 806, Exchange Gas, and that the effect of the delayed exchange would be included in the calculation of Applicant's purchased gas cost adjustment. Applicant requests Commission approval of its accounting and rate treatment or Commission assurance that Applicant would be able to recover its costs during both the delivery and redelivery periods of the proposed exchange.

Applicant further requests that delivery of exchange gas not be subject to curtailment by Applicant as a result of the terms of Applicant's curtailment plan as revised from time to time or because of any other reason except *force majeure.*

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39529 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-101]

Northwest Pipeline Corp.; Notice of Application

December 19, 1979.

Take notice that on November 21, 1979, Northwest Pipeline Corporation (Applicant), P. O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP80-101 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the transportation of natural gas for the account of Northwest Natural Gas Company (Northern), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant states that it has entered into a gas transportation agreement with Northern dated October 5, 1979, which provides for the transportation of up to 10,000 Mcf of natural gas per day, which Northern has or would have available from wells

located in the Sage Brush Hills area of Rio Blanco County, Colorado.

It is said further, that upon receipt of gas tendered by Northern, Applicant would transport such volumes through its facilities to a point of interconnection with Mountain Fuel Resources, Inc. (Resources) in Rio Blanco County, Colorado, where thermally equivalent volumes, less compressor fuel, would be delivered to Resources.

Applicant states that Resources would transport and redeliver the subject gas, less operational losses, to Applicant for the account of Northern at a point of interconnection between Resources and Applicant in Rio Blanco County, Colorado.

Applicant states further that it would transport the gas, less one and one-half percent retained for fuel use, to El Paso Natural Gas Company (El Paso) at the existing point of interconnection between Applicant and El Paso located in La Plata County, Colorado.

It is said that gas so delivered by Applicant to El Paso for the account of Northern would then be further transported and/or exchanged by El Paso for ultimate redelivery to Northern.

Applicant proposes to transport up to 1,924 Mcf of gas per day during the first year, up to 1,434 Mcf per day during the second year, and up to 1,275 Mcf per day during the third year of operation. Applicant states that additional development of the acreage subject to the agreement is anticipated to provide increased volumes in the future.

Applicant states that it would charge Northern 30.5 cents per Mcf for gas delivered to Resources.

Applicant states that it would also charge Northern for the transportation of Northern's gas on Applicant's mainline for redelivery to El Paso. It is further stated that the contemplated transportation by Applicant for Northern would initially be effectuated by displacement, for which Northern would be charged a transportation rate equal to 50 percent of Applicant's average rolled-in transmission cost-of-service, currently 10.54 cents per Mcf. The agreement, it is said, provides that at such time that Applicant redelivers gas to El Paso for Northern's account by direct transportation, Applicant would charge Northern a transportation rate equal to Applicant's average rolled-in transmission cost-of-service, currently 21.08 cents per Mcf.

It is stated that the gathering trunk facilities for the receipt of gas from Northern for delivery to Resources would be constructed and operated pursuant to Applicant's budget authority for gas supply facilities. Applicant states that the connection to this trunk from the initial five wells would be constructed and owned by Northern.

It is further stated that Applicant proposes to construct and operate an eight-inch tap and related metering facilities at the proposed point of interconnection between Resources' pipeline and Applicant's mainline facilities at a cost of approximately $22,110, which amount would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39530 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-150]

Northwest Pipeline Corp.; Notice of Amendment to Application

December 19, 1979

Take notice that on November 26, 1979, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP79-150 an amendment to its application filed in said docket on January 17, 1979, pursuant to Section 7(c) of the Natural Gas Act by which amendment Applicant provides information requested by the Commission and up-dates certain exhibits which have become out-dated because of elapsed time, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that the proposed mileage of various sizes of pipeline has been changed to reflect surveyed distances as follows: from 6.38 miles of 10-inch O.D. pipeline to 6.36 miles; from 16.13 miles of 16-inch O.D. pipeline to 15.49 miles; and from 26.20 miles of 20-inch pipeline to 26.33 miles.

It is stated that the horsepower previously requested was erroneously reflected as a four unit station totaling 3,390 horsepower in the Ryckman Creek Field, whereas, it should have been shown as a three unit station totaling 2,625 horsepower.

Applicant states further that by a gas purchase contract dated October 23, 1979, between it and Amoco Production Company together with its gas purchase contract with Chevron U.S.A., Inc. dedicates a total of 87.5 percent of the available gas reserves in the Ryckman Field Creek to Applicant. It is stated that the producers have the option to have Applicant process the Ryckman gas at Applicant's existing Opal gasoline plant.

It is stated that the estimated costs have been revised to reflect the inflationary impact of shifting from a 1979 construction schedule to a mid-year 1980 schedule. It is stated such costs now total approximately $47,419. Applicant further states that the proposed facilities would initially be financed by short-term borrowings which would be replaced with permanent financing consistent with its then overall financial requirements.

Exhibit P has been supplemented to illustrate the cost of processing gas at the Opal plant and the development of Ryckman-Painter area gathering rate based on the rate of return in Applicant's most recent general rate increase in Docket No. RP79-57.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39531 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ST80-6]

Producer's Gas Co.; Petition for Approval of Transportation Charges

December 19, 1979

Take notice that on November 9, 1979, Producer's Gas Company (Petitioner), 950 One Energy Square, 4925 Greenville Avenue, Dallas, Texas 75206, filed in Docket No. ST80-6 a petition (1) pursuant to Section 284.123(b)(2) of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) for an order approving a base transportation charge of 18.45 cents per Mcf for the intrastate transportation and redelivery of natural gas to Michigan-Wisconsin Pipe Line Company (Mich-Wis), (2) for a waiver of the reporting requirements of Section 284.4 of the Commission's Regulations with respect to such transportation, and (3) for an extension of time for the filing of its initial full report under Section 284.126(a) of the Commission's Regulations to November 9, 1979, all as more fully ser forth in the petitions which are on file with the Commission and open to public inspection.

Petitioner states that by an agreement with Mich-Wis on September 18, 1979, it is to gather Mich-Wis's interest in gas wells in Caddo County, Oklahoma, until Mich-Wis constructs its own gathering facilities. It is stated that this agreement is for two years with a possible two-year renewal.

It is further stated that the gas of Mich-Wis would be delivered to Western Farmers Electric Cooperative at an existing delivery point in Caddo County, Oklahoma, for Petitioner's account and that Petitioner would provide Mich-Wis an equivalent volume of gas at a common connection point in Dewey County, Oklahoma. It is said that approximately 9,340 million Btu's per day would be transported for Mich-Wis pursuant to the transportation agreement and that during the primary two-year term a projected total of 6,730,000 million Btu's would be delivered.

Petitioner further states that it was unaware of the 48 hour notice requirement in Section 284.4(b) of the Commission's Regulations or of the Commission's Order No. 46 when it commenced the transportation of gas for Mich-Wis. It is further stated that Petitioner's failure to file its Initial Full Report within 30 days as required by Section 284.126(a) of the Commission's Regulations arose, in part, by the Commission's order dated October 24, 1979, granting rehearing of Order No. 46 for the purpose of reconsideration as Petitioner is unaware of possible changes resulting from the rehearing.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39532 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-7]

Southern Natural Gas Co.; Notice of Petition to Amend

December 19, 1979.

Take notice that on November 19, 1979, Southern Natural Gas Company (Petitioner), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7 a petition to amend the order issued October 29, 1969,[1] as amended, in the instant docket pursuant to Section 7 of the Natural Gas Act so as to authorize (1) an increase in the aggregate contract demand volume of Alabama Gas Corporation (Alagasco) from 418,527 Mcf per day to 418,877 Mcf per day and (2) an additional delivery point measuring station to Alagasco and the deletion of the authorization to sell gas to the Town of Steele, Alabama, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that pursuant to the order issued October 29, 1969, as amended, it is authorized, *inter alia,* to sell and deliver to the Town of Steele, Alabama, a maximum delivery obligation volume of 350 Mcf of gas per day.

Petitioner states that on October 31, 1979, Alagasco petitioned the Alabama Public Service Commission for permission to purchase the gas distribution system of the Town of Steele, Alabama. It is stated further the Petitioner's maximum delivery obligation of 350 Mcf per day, to the Town of Steele, has been assigned to Alagasco.

Petitioner further states that by an agreement dated October 29, 1979, with Alagasco, the service agreement between them was amended so as to provide for a new delivery point measuring station and additional contract demand volume of 350 Mcf per day to reflect Alagasco's assumption of Petitioner's service agreement with the Town of Steele.

Petitioner states that the delivery point with an additional 350 Mcf per day contract demand volume would be offset by the abandonment of the sale to the Town of Steele.

It is further stated that the reliability of gas service now rendered to customers in and about the Town of Steele, Alabama, would be substantially improved as the result of the ability of Alagasco's present peak shaving facilities to provide gas to meet peak load conditions on the system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party

[1] This proceeding was commenced before the Federal Power Commission. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

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. 79-39533 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-97]

Southern Natural Gas Co.; Notice of Application

December 19, 1979.

Take notice that on November 19, 1979, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP80-97 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place certain described facilities and to abandon the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon in place approximately 2.7 miles of 4½-inch pipeline known as the Lovick Line with appurtenances thereto, and metering stations thereon, known as the McDavid Meter Station and the Lovick Meter Station. Applicant further proposes to abandon the direct sale transportation for William L. McDavid, formerly Stephenson Brick and Tile Company. Furthermore, Applicant states it would abandon an appurtenant regulator station located at the intersection of the Lovick Line and Applicant's main lines known as the Lovick Tap Regulator Station and a farm tap facility known as the Mountain Lake Farm Tap.

It is stated that the McDavid Meter Station facilities are currently available for direct sale deliveries to William L. McDavid, but that no deliveries are required at this time. Applicant states that the balance of the facilities are currently used for delivery of gas to Alabama Gas Corporation (Algasco). Applicant proposes to delete the Lovick Delivery Point and reallocate that contract demand volume of 168 Mcf per day to the Birmingham Area Delivery Point in Applicant's service agreement with Algasco.

It is further stated that Algasco would extend its Lovick distribution system to interconnect with another of its distribution systems, and that Applicant would supply the Lovick distribution system at the existing Birmingham Area Delivery Point measuring station.

It is asserted that these facilities are in need of substantial repair as a result of physical deterioration which would require an investment disproportionate to gas sale revenues from this system.

Any person desiring to be heard or to make protest with reference to said application should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-39534 Filed 12-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-65]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Notice of Application

December 19, 1979.

Take notice that on November 8, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-65 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the transportation of natural gas in connection with a related storage service in New York, Pennsylvania, Massachusetts, Connecticut, and New Hampshire, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate facilities and render transportation services for natural gas storage services which some of its existing customers in New York, Pennsylvania, and New England propose to purchase from Consolidated Gas Supply Corporation (Consolidated), Honeoye Storage Corporation (Honeoye) and National Gas Storage Corporation (National).

Applicant proposes to transport top storage injection and withdrawal volumes for certain of its customers on a long-term firm basis and for others on a long-term best-efforts basis, with a primary term ending March 31, 1995. Additionally, Applicant proposes to transport base gas injection volumes for certain of its customers on a short-term best-efforts basis in connection with the Honeoye and National storage services. It is stated that short-term transportation services would expire on October 31, 1983.

The facilities proposed by Applicant for construction in 1980 are (1) a 4,500 NEMA Horsepower Compression Station 319 in Pennsylvania, and (2) 11 miles of 12.750-inch delivery line loop in New Hampshire and Massachusetts.

Applicant states that the 1981 construction in New York, Massachusetts, Connecticut, and New Hampshire would be as follows:

Main Line Loop

Location	Size (inch)	Miles
MLV 239 to MLV 239+4.0	30	4.0
MLV 243+5.74 to MLV 244	30	7.0
MLV 248 to MLV 248+5.0	30	5.0
MLV 250 to MLV 250+4.0	30	4.0
MLV 258 to MLV 258+9.0	30	9.0

Delivery Line Loop

Location	Size (inch)	Miles
Val. 256A–101 to Val. 256A–101+3.00	10.750	3.0
Val. 259B–101C to Val. 259B– 101C+3.0.	8.625	3.0
Val. 266C–102+1.65 to Val. 266C– 102+4.65.	12.750	3.0
Val. 270B–103+8.0 to Val. 270B– 103+2.0.	12.750	4.0

It is stated that the direct cost of the 1980 construction is estimated to be $7,589,000 and that of the 1981 construction is estimated to be $26,225,000. Such costs, it is stated, would be financed with funds on hand, funds generated internally, borrowings under revolving credit agreements or short-term financing.

Applicant states that it would provide long-term storage service commencing April 1, 1980, for some customers on a best-efforts basis and for others on a firm basis on the following volumes at 14.73 psia:

Customer	Best efforts		Firm	
	Daily transportation volume (Mcf)	Winter transportation volume (Mcf)	Maximum daily volume (Mcf)	Top storage volume available from consolidated (Mcf)
Bay State Gas Co	13,956	1,535,164		
Berkshire Gas Co			1,273	140,000
Boston Gas Co	909	100,000		
Commonwealth Gas Co	8,227	905,000		
Connecticut Natural Gas Corp	591	65,000		
Fitchburg Gas & Electric Light Co			455	50,000
Haverhill Gas Co			3,182	350,000
Manchester Gas Co			909	100,000
Valley Gas Co			1,364	150,000

Applicant states further that the proposed service would be rendered pursuant to its *pro forma* storage service transportation contract and its *pro forma* Rate Schedule SST (for firm service) and its interruptible storage service contract and *pro forma* Rate Schedule ISST for best-efforts service.

It is stated that Applicant would render this transportation service by receiving from each of the above-mentioned customers during each summer, commencing with the 1980 summer, volumes up to the maximum volumes specified above, which volumes the customers would make available to Applicant from their respective purchases from Applicant under Applicant's contracted demand rate schedule and by transporting and delivering equivalent volumes to Consolidated at Applicant's existing Ellisburg Storage Field delivery point to Consolidated located in Potter County, Pennsylvania, for injection into storage for the account of each customer. During each winter period, Applicant would receive volumes from Consolidated at Ellisburg, for the account of each customer, and transport and deliver equivalent volumes up to the above daily volumes to each customer at the delivery points set forth in its respective transportation contract.

Applicant states that the above firm services would require the use of the facilities proposed to be constructed during the 1980 summer.

Applicant further states that it is presently authorized, by order issued August 1, 1975, in Docket No. CP75–95, to transport top storage injection and withdrawal volumes on a best-efforts basis for three of its customers; namely, Consolidated Edison Company of New York, Inc. (Con Ed), Long Island Lighting Company and The Brooklyn Union Gas Company (BUG) in connection with a storage service rendered for those three customers by Honeoye through its storage facilities in Ontario County, New York.

It is said that Con Ed and BUG have requested that Applicant transport their top storage injection and withdrawal volumes on a firm basis, instead of the present best-efforts basis, commencing with the 1980–81 winter withdrawal period, and both Con Ed and BUG would each have transported by Applicant a maximum daily volume of 6,667 Mcf and each a 1,000,000 Mcf top storage volume available from Honeoye.

Applicant further proposes that the transportation of top storage injection and withdrawal volumes for the two customers be performed on and after the date Applicant has completed construction of the related proposed facilities and is prepared to commence the transportation service on a firm basis and that Applicant's authorization at Docket No. CP75–95 terminate as to Con Ed and BUG effective the same date. It is stated that the facilities proposed for construction during 1980 would be necessary to convert the transportation service to a firm basis.

Applicant states that two of Applicant's other customers, Boston Gas Company (Boston Gas) and Gas Service, Inc. (Gas Service), have contracted with Honeoye for storage service commencing on April 1, 1980.

It is said that in order for each of these customers to receive the storage service from Honeoye, they have requested and Appliant has agreed to transport, on a long term basis, their top storage injection and withdrawal volumes between Honeoye's storage facilities and Applicant's respective sales meter station delivery point to each customer as set forth in the *pro forma* storage service transportation contract and *pro forma* Rate Schedule SST for firm service and its *pro forma* interruptible storage service transportation contract and *pro forma* Rate Schedule ISST for best-efforts service.

Applicant further states that Boston Gas has requested that the transportation service rendered for it be performed on a best-efforts basis, and Gas Service has requested service in part on a best-efforts basis and in part on a firm basis. It is stated both customers have requested Applicant to commence transportation of their top storage injection volumes during the 1980 summer after they fulfill their obligations to provide base gas injection volumes to Honeoye and that the facilities proposed by Applicant to be constructed during the 1980 summer would be necessary to enable Applicant to commence the firm transportation of storage withdrawal volumes for Gas Service effective November 1, 1980.

The volumes which Applicant proposes to transport for each customer are as follows:

Customer	Best efforts		Firm	
	Daily transportation volume (Mcf)	Winter transportation volume (Mcf)	Maximum daily volume (Mcf)	Top storage volume available from Honeoye (Mcf)
Boston Gas	7,273	800,000		
Gas Service	909	100,000	1,000	[1]100,000

[1]Applicant states that the top storage space to be made available by Honeoye to Gas Service would be 200,000 Mcf and that Gas Service plans to request Applicant to transport 100,000 Mcf of this gas on a best-efforts basis and 100,000 Mcf on a firm basis.

Applicant proposes to service Gas Service's Nashua and Laconia service areas under Applicant's Rate Schedule CD–6 pursuant to an agreement between Applicant and Gas Service. In addition Applicant also requests authorization to transport on a best-efforts basis commencing with the 1980 summer injection period on April 1, 1980, certain volumes of natural gas for Boston Gas and Gas Service for their base storage gas injections related to Honeoye's storage service for such customers as follows:

Customer	Maximum daily volume (Mcf)	Base storage gas obligation to Honeoye (Mcf)
Boston Gas	2,476	520,000
Gas Service	629	130,000

Applicant anticipates that all of the above base gas storage volumes would be delivered by it to Honeoye, for the account of each customer, during the 1980 summer.

It is said that this service would be rendered pursuant to the *pro forma* interruptible base gas transportation contract and *pro forma* Rate Schedule IBGT.

Applicant further proposes to transport top storage injection and withdrawal volumes for certain customers in relation to their storage service with National on best-efforts and/or firm basis as follows:

Customer	Best efforts		Firm	
	Daily transportation volume (Mcf)	Winter transportation volume (Mcf)	Maximum daily volume (Mcf)	Top storage volume available from national [2] (Mcf)
Berkshire Gas Co.	1,273	140,000	2,354	260,000
Boston Gas	7,426	816,641		
Central Hudson Gas & Electric Corp.			4,545	500,000
Connecticut Gas Co.	4,823	530,000	6,463	963,450
Connecticut Natural Gas Corp.	4,924	541,600	8,030	959,400
Fitchburg Gas & Electric Lt. Co.	455	50,000		
Gas Service	909	100,000	1,000	100,000
Haverhill Gas Co.	2,395	263,431	787	88,569
Lowell Gas Co.	2,491	274,000	15,691	1,726,000
Manchester Gas Co.			1,227	135,000
Orange & Rockland Utilities, Inc.			9,091	1,000,000
Penn. & Southern Gas Co. (Penn)	1,818	200,000		
Southern Connecticut Gas Co.			1,000	150,000
Valley Gas Company	1,364	150,000	2,727	300,000

[2] The volumes in this column are only that portion of buyer's top storage volume available from National which buyer has indicated it would request Applicant to transport under Applicant's firm transportation service. The balance of buyer's top storage volume appears in the column entitled Winter Transportation Volume.

Applicant states that under National's storage program, volumes of natural gas made available to National from the above customers via Applicant during the 1980 summer would be utilized by National entirely as base storage gas for the account of each customer and that gas made available to National by these customers during the 1981 summer would be utilized by National, in part as base storage gas; and in part as top storage gas for each customer's account. Applicant proposes to make available its transportation of the top storage injection volumes related to both its best-efforts and firm transportation services listed above whenever such services are requested on or after April 1, 1981. Applicant further proposes to make available its transportation of top storage withdrawal volumes under the best-efforts transportation services listed above whenever they are requested after April 1, 1981, and to make available its transportation of top storage withdrawal volumes under the above-listed firm transportation services upon completion of its facilities proposed herein to be constructed during the 1981 summer, which completion date is projected to be November 1, 1981.

Applicant's transportation of the top storage injection and withdrawal volumes would be performed by it on a best-efforts basis for all customers listed above, except Penn, pursuant to the *pro forma* interruptible storage service transportation contracts and *pro forma* Rate Schedule ISST, and for Penn pursuant to a *pro forma* transportation contract, and on a firm basis pursuant to *pro forma* storage service transportation contracts. It is further stated that the firm services would require the utilization by Applicant of the facilities proposed for construction during the 1981 summer.

Applicant further states that both the best-efforts and firm top storage transportation volumes which it proposes to transport are volumes which the customers would nominate for transportation to National for storage from their respective purchases from Applicant under its contracted demand rate schedule.

It is also said that as to top storage injection volumes, Applicant would deliver such volumes as nominated to National at the proposed interconnection of the facilities of Applicant and National to be located in Potter County, Pennsylvania, for injection into storage for the account of each customer. As to top storage withdrawal volumes, Applicant would receive volumes from National for the account of each customer and transport and deliver equivalent volumes for each customer at its existing delivery point(s) to each customer set forth in its respective transportation contract, it is asserted.

Applicant states that in order to be able to render the top storage services for the above listed customers, National would require each of them to furnish base storage injection gas to National. Therefore, Applicant also requests authorization to transport on a best-efforts basis commencing with the 1980 summer injection period on April 1, 1980, certain volumes of natural gas for the customers listed above for their base storage gas injections which would enable National to inject base gas into its underground storage fields.

The maximum daily base gas injection volumes to be transported by Applicant for each customer and the total base gas volume required by National from each customer are as follows:

	Maximum daily volume (Mcf)	Base storage gas obligation to National (Mcf)
Berkshire Gas Co	573	214,000
Boston Gas	1,259	470,000
Central Hudson Gas & Electric Corp	711	268,000
Connecticut Gas Co	2,137	804,000
Connecticut Natural Gas Corp	2,137	804,000
Fitchburg Gas & Electric Lt. Co	72	27,000
Gas Service	283	107,000
Haverhill Gas Co	500	188,000
Lowell Gas Co	2,848	1,072,000
Manchester Gas Co	191	72,000
Orange & Rockland Utilities, Inc	1,427	536,000
Penn	283	107,000
Southern Connecticut Gas Co	211	80,000
Valley Gas Co	639	241,000

Applicant requests authorization to serve Penn hereunder in accordance

with its Rate Schedule CD–4 in lieu of Rate Schedule G–4, with a contract demand volume equal to Penn's presently effective and authorized maximum daily volume of 12,470 Mcf per day effective on the date Applicant first transports top storage injection gas for Penn.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 9, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–39535 Filed 12–27–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. CP74–33]

Transcontinental Gas Pipe Line Corp.; Notice of Petition to Amend

December 19, 1979.

Take notice that on November 29, 1979, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP74–33 a petition to amend the order of February 26, 1975 [1], as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act, so as to delete the allocation of rate schedule WSS service for UGI Corporation (UGI), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that of the present top capacity of the Washington Storage Field, St. Landry Parish, Louisiana, of 66,000,000 dekatherms (dt) equivalent of natural gas, a total of 65,203,319 dt has been allocated by the Commission to Petitioner's Rate Schedule WSS customers. Petitioner states further that one of said customers, UGI, desires to relinquish its allocation of 125,000 dt equivalent. Petitioner, therefore, requests that its authorization be amended to eliminate the WSS service allocation of UGI.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–39536 Filed 12–27–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. CP75–265]

United Gas Pipe Line Co. and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Notice of Petition to Amend

December 19, 1979

Take notice that on November 29, 1979, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75–265 a joint petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act on July 15, 1975, as amended, in the instant docket [1] so as to authorize a new delivery point for the exchange of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners stated that by an agreement dated September 27, 1979, they have agreed to establish a new delivery point for the exchange of natural gas at an existing point of interconnection between Tennessee's 16-inch Cameron-Grand Chenier Line and United's 4-inch pipeline on the east bank of the Calcasieu River in Cameron Parish, Louisiana.

It is stated that the proposed exchange point would make additional volumes available during the peak heating season. It is further asserted that no additional facilities would be required.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–39537 Filed 12–27–79; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances

[OPTS–51012; FRL 1380–3]

Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA, or the Agency).

[1] This proceeding was commenced before the Federal Power Commission. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

ACTION: Receipt of Premanufacture Notice.

SUMMARY: Section (§)5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish a summary of each PMN in the Federal Register. This Notice announces receipt of a PMN and provides a summary.

DATE: Persons who wish to file written comments on the PMN should submit their comments no later than 30 days before the applicable notice review period ends.

ADDRESS: Written comments should bear the PMN number "5AHQ1179–0070" and should be submitted in triplicate to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, EPA, 401 M Street, SW., Washington, D.C. 20460.

Nonconfidential portions of the PMN and other documents in the public record are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays), in Room E–447 at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. George Bagley, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, EPA, Washington, D.C. 20460, telephone: 202/426–3936.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances complied by EPA under § 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. (Notice of availability of the Initial Inventory was published in the Federal Register on May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms (44 FR 2242, January 10, 1979). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy (44 FR 28564, May 15, 1979) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see the section entitled "Notice in the Federal Register" on p. 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a non-confidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentially claims for chemical identify, chemical use, the identity of the submitter, and health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

EPA normally has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may for good cause extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under Section 5(a)(1)(A).

(Section 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604).)

Dated: December 19, 1979.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

PMN No. 5AHQ–1179–0070.

Close of Review Period: February 14, 1980.

Manufacturer's Identity: Claimed confidential.

Specific Chemical Identity: The company claims the specific chemical identity to be confidential.

Uses: The company claims the uses to be confidential.

Data Submitted: The company claims as confidential the data describing the physical and chemical properties of the new chemical substance. No other health and safety data were submitted.

[FR Doc. 79-39510 Filed 12-27-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-00110; 1380-7]

Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel; Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:00 a.m. to 5:00 p.m. daily on Thursday and Friday, January 17 and 18, 1980. The meeting will be held in the Terrace Room, Quality Inn—Pentagon City, 300 Army Navy Drive, Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–766), EPA, Room 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202, Telephone: 703/557–7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact of regulatory actions under sections 6(b) and 25(a) on health and the environment prior to implementation. The agenda for this meeting will include the following topics:

1. Discussion of Agency assessment of toxicology and safety data on the chlorinated isocyanurates for swimming pool sanitation uses;

2. Agency presentation on the hazard to avian species from the use of soil-incorporated granular pesticides;

3. Review of data contained in the Canadian and Mississippi studies on photomirex in response to a Congressional request;

4. Completion of any unfinished business from previous Panel meetings; and

5. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of draft documents concerning item 1 may be obtained by contacting Mr. Homer Hall, Special Pesticide Review Division (TS-791), Room: 724 J, Crystal Mall, Building No. 2, at the address given above, Telephone: 703/557-7440. Information relative to item 2 may be obtained by contacting Mr. Richard Balcomb, Telephone: 703/557-7725. Information relative to item 3, may be obtained by contacting the Executive Secretary at the above address and telephone number.

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled and to confirm that the Panel will review all of the agenda items. Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit the required number of copies of a summary no later than January 14, 1980.

Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to be instructed on the format and the number of copies to submit to ensure appropriate consideration by the Panel.

The tentative date for the next Scientific Advisory Panel meeting is Friday and Saturday, February 22 and 23, 1980, in Tucson, Arizona.

Authority: Section 25(d) of FIFRA, amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

Dated: December 20, 1979.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-39640 Filed 12-27-79 am]

BILLING CODE 6560-01-M

[OPTS-51013; 1380-6]

Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA, or the Agency).

ACTION: Receipt of Premanufacture Notices.

SUMMARY: Section (§) 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. § 5(d)(2) requires EPA to publish a summary of each PMN in the Federal Register. This Notice announces receipt of PMN's and provides a summary of each.

DATE: Persons who wish to file written comments on a PMN should submit their comments no later than 30 days before the applicable notice review period ends.

ADDRESS: Written comments should bear the PMN number of the particular chemical substance, and should be submitted in triplicate to the Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, EPA, 401 M Street, S.W., Washington, D.C. 20460.

Nonconfidential portions of the PMN's and other documents in the public record are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays), in Room E-447 at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Flamm, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, EPA, Washington, D.C 20460, telephone: 202/426-3980.

SUPPLEMENTARY INFORMATION: § 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under § 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. (Notice of availability of the Initial Inventory was published in the Federal Register on May 15, 1979 (44 FR 28558)). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms (44 FR 2242, January 10, 1979). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy (44 FR 28564, May 15, 1979) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see the section entitled "Notice in the Federal Register" on p. 28567 of the Interim Policy.

A PMN must include the information listed in § 5(d)(1) of TSCA. Under § 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under § 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the § 5(d)(2) notice is subject to §14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, and the generic use and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

EPA normally has 90 days to review a PMN once the Agency receives it (§ 5(a)(1)). The § 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under § 5(c), EPA may for good cause extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must

report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under § 5(a)(1)(A).

Authority: § 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604).

Dated: December 20, 1979.

John P. DeKany

Deputy Assistant Administrator for Chemical Control.

PMN No.: 5AHQ-1279-0079.

Close of Review Period: March 12, 1980.

Manufacturer's Identity: Manufacturer's identity is claimed confidential.

Specific Chemical Identity: Polymer of phthalic anhydride, ethylene glycol, heptanol, and 2-ethylhexanol.

Use: Plasticizer for polyvinyl chloride resins.

Data: [1]

Physical/Chemical Properties:
Theoretical min. avg. molecular wt.—500
Color—clear yellow liquid
Viscosity (centipoise), 25° C—1900
Specific gravity, 25°/25° C—1.090
Acid value—2.0
Refractive index at 25° C—1.505
Flash point—COC, °F—455
Fire point—COC, °F—500
Pour point—ASTM, °F—18
Odor—characteristic

Exposure and Effects: Dermal exposure may occur during reactor sampling, quality control testing, drumming, and loading tankcars/tankwagons. However, the potential for contact is slight, as employees wear gloves, goggles/safety glasses and other appropriate protective equipment to prevent skin contact. Maximum duration of exposure will occur during drumming operations which could take up to six (6) hours.

Polyvinyl chloride plastic articles may contain up to sixty percent (60%) plasticizer. The plasticizer forms a molecular film on the finished plastic article. As a result of handling plastic articles, minute quantities of plasticizer may be rubbed-off from contact.

The plasticizer is similar in chemical structure to other commercial polymeric plasticizers for polyvinyl chloride resins which have been marketed for over thirty years. The manufacturer states that it is not aware of any adverse effects resulting from the use of similar high molecular weight plasticizers.

PMN No.: 5AHQ-1279-0080.

Close of Review Period: March 12, 1980.

Manufacturer's Identity: Manufacturer's identity is claimed confidential.

Specific Chemical Identity: Polymer of phthalic anhydride, 1,2-propylene glycol, 1,4-butanediol, 1-octanol and 1-decanol.

Use: Plasticizer for polyvinyl chloride resins.

Data: [1]

Physical/Chemical Properties:
Theoretical min. avg. molecular wt.—560
Color—clear yellow liquid
Viscosity (centipoise), 25° C—3960
Specific gravity, 25°/25° C—1.1000
Acid value—2.0
Refractive index at 25° C—1.5140
Flash point—COC, °F—450
Fire point—COC, °F—490
Pour point—ASTM, °F—20
Odor—characteristic

Exposure and Effects: Dermal exposure may occur during reactor sampling, quality control testing, drumming, and loading tankcars/tankwagons. However, the potential for contact is slight, as employees wear gloves, goggles/safety glasses and other appropriate protective equipment to prevent skin contact. Maximum duration of exposure will occur during drumming operations which could take up to six (6) hours.

Polyvinyl chloride plastic articles may contain up to sixty percent (60%) plasticizer. The plasticizer forms a molecular film on the finished plastic article. As a result of handling plastic articles, minute quantities of plasticizer may be rubbed-off from contact.

The plasticizer is similar in chemical structure to other commercial polymeric plasticizers for polyvinyl chloride resins which have been marketed for over thirty years. The manufacturer states that it is not aware of any adverse effects resulting from the use of similar high molecular weight plasticizers.

PMN No.: 5AHQ-1279-0081.

Close of Review Period: March 12, 1980.

Manufacturer's Identity: Manufacturer's identity is claimed confidential.

Specific Chemical Identity: Polymer of phthalic anhydride, ethylene glycol, heptanol, 1-octanol, and 1-decanol.

Use: Plasticizer for polyvinyl chloride resins.

Data: [1]

Physical/Chemical Properties:
Theoretical min. avg. molecular wt.—500
Color—clear yellow liquid
Viscosity (centipoise), 25° C—1900
Specific gravity, 25° C/25° C—1.090
Acid value—2.0
Refractive index at 25° C—1.505
Flash point—COC, °F—455
Fire point—COC, °F—500
Pour point—ASTM, °F—18
Odor—characteristic

Exposure and Effects: Dermal exposure may occur during reactor sampling, quality control testing, drumming, and loading tankcars/tankwagons. However, the potential for contact is slight, as employees wear gloves, goggles/safety glasses and other appropriate protective equipment to prevent skin contact. Maximum duration of exposure will occur during drumming operations which could take up to six (6) hours.

Polyvinyl chloride plastic articles may contain up to sixty percent (60%) plasticizer. The plasticizer forms a molecular film on the finished plastic article. As a result of handling plastic articles, minute quantities of plasticizer may be rubbed-off from contact.

The plasticizer is similar in chemical structure to other commercial polymeric plasticizers for polyvinyl chloride resins which have been marketed for over thirty years. The manufacturer states that it is not aware of any adverse effects resulting from the use of similar high molecular weight plasticizers.

PMN No.: 5AHQ-1279-0082.

Close of Review Period: March 12, 1980.

Manufacturer's Identity: Manufacturer's identity is claimed confidential.

Specific Chemical Identity: Polymer of phthalic anhydride, 1,2-propylene glycol, 1,4-butanediol, and 2-ethylhexanol.

Use: Plasticizer for polyvinyl chloride resins.

Data: [1]

Physical/Chemical Properties:
Theoretical min. avg. molecular wt.—560
Color—clear yellow liquid
Viscosity (centipoise), 25° C—3960
Specific gravity, 25° C/25° C—1.1000
Acid value—2.0
Refractive index at 25° C—1.5140
Flash point—COC, °F—450
Fire point—COC, °F—490
Pour point—ASTM, °F—20
Odor—characteristic

Exposure and Effects: Dermal exposure may occur during reactor sampling, quality control testing, drumming, and loading tankcars/tankwagons. However, the potential for contact is slight, as employees wear gloves, goggles/safety glasses and other appropriate protective equipment to prevent skin contact. Maximum duration of exposure will occur during drumming operations which could take up to six (6) hours.

Polyvinyl chloride plastic articles may contain up to sixty percent (60%) plasticizer. The plasticizer forms a molecular film on the finished plastic article. As a result of handling plastic articles, minute quantities of plasticizer may be rubbed off from contact.

The plasticizer is similar in chemical structure to other commercial ploymeric plasticizers for polyvinyl chloride resins which have been marketed for over thirty years. The manufacturer states that it is not aware of any adverse effects resulting from the use of similar high molecular weight plasticizers.

PMN No.: 5AHQ-1279-0083.

Close of Review Period: March 12, 1980.

Manufacturer's Identity: Manufacturer's identity is claimed confidential.

Specific Chemical Identity: Polymer of phthalic anhydride, 1, 3-butylene glycol, 1-octanol, and 1-decanol.

Use: Plasticizer for polyvinyl chloride resins.

Data: [1]

Physical/Chemical Properties:
Theoretical min. avg. molecular weight—574
Color—clear yellow liquid
Viscosity (centipoise), 25°C—795
Specific gravity, 25°/25°C—1.0600
Acid value—2.0
Refractive index at 25°C—1.5040
Flash point—COC, °F—465
Fire point—COC, °F—500
Pour point—ASTM, °F——5
Odor—characteristic

Exposure and Effects: Dermal exposure may occur during reactor sampling, quality control testing, drumming, and loading tankcars/tankwagons. However, the potential for contact is slight, as employees wear gloves goggles/safety glasses and other appropriate protective equipment to prevent skin contact. Maximum duration of exposure will occur during drumming operations which could take up to six (6) hours.

Polyvinyl choride plastic articles may contain up to sixty percent (60%) plasticizer.

[1] All data and other information are as provided by the manufacturer.

[1] All data and other information are as provided by manufacturer.

The plasticizer forms a molecular film on the finished plastic article. As a result of handling plastic articles, minute quantities of plasticizer may be rubbed off from contact.

The plasticizer is similar in chemical structure to other commercial polymeric plasticizers for polyvinyl choloride resins which have been marketed for over thirty years. The manufacturer states that it is not aware of any adverse effects resulting from the use of similar high molecular weight plasticizers.

PMN No.: 5AHQ-1279-0084.

Close of Review Period: March 12, 1980.

Manufacturer's Identity: Manufacturer's identity is claimed confidential.

Specific Chemical Identity: Polymer of phthalic anhydride, 1,3-butylene glycol, 2-ethylhexanol.

Use: Plasticizer for polyvinly chloride resins.

Data: [1]

Physical/Chemical Properties:
Theoretical min. avg. molecular wt.—574
Color—clear yellow liquid
Viscosity (centipoise), 25°C—795
Specific gravity, 25°/25°C—1.0600
Acid value—2.0
Refractive index at 25°C—1.5040
Flash point—COC, °F—465
Fire point—CVOC, °F—500
Pour point—ASTM, °F——5
Odor—characteristic

Exposure and Effects: Dermal exposure may occur during reactor sampling, quality control testing, drumming, and loading tankcar/tankwagons. However, the potential for contact is slight, as employees wear gloves, goggles/safety glasses and other appropriate protective equipment to prevent skin contact. Maximum duration of exposure will occur during drumming operations which could take up to six (6) hours.

Polyvinyl chloride plastic articles may contain up to sixty percent (60%) plasticizer. The plasticizer forms a molecular film on the finished plastic article. As a result of handling plastic articles, minute quantities of plasticizer may be rubbed off from contact.

The plasticizer is similar in chemical structure to other commercial polymeric plasticizers for polyvinyl chloride resins which have been marketed for over thirty years. The manufacturer states that it is not aware of any adverse effects resulting from the use of similar high molecular weight plasticizers.

[FR Doc. 79-39645 Filed 12-27-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Development and Review of FDIC Rules and Regulations; Statement of Policy, Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Amendment of policy statement.

SUMMARY: As part of its general regulatory reform effort and FDIC initiatives for the White House Conference on Small Business, FDIC has amended its policy statement which sets forth the procedures for the development and review of its regulations. The amendments formally incorporated into the policy statement specific provisions to insure that maximum consideration is given to the reduction of the regulatory burden for small banks, *i.e.*, banks with assets of $25 million or less.

EFFECTIVE DATE: December 20, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry L. Langley, Senior Attorney, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, 202-389-4237

SUPPLEMENTARY INFORMATION: The amendments change the "Policy and Scope" section to emphasize that the reduction of the regulatory burden for small banks is a primary concern of FDIC. Further, with respect to the development of new regulations, the amendments provide for the disclosure of information concerning (1) the consideration that is given to the use of alternative regulatory approaches to minimize the small bank burden and (2) the development of impact statements for small banks. The amendments also provide that appropriate consideration will be given to the reduction of the small bank burden when existing FDIC regulations are reviewed. In addition, the amendments state that the FDIC Regulations Task Force will review formal proposals for new regulations to determine whether they comply with the FDIC policy statement.

Accordingly, FDIC does hereby amend its policy statement entitled "Development and Review of FDIC Rules and Regulations" (44 FR 31007; 44 FR 32353) as follows:

1. Item "(f)" of the first paragraph in section 1 is changed to read: "(f) That burdens on the public, on the banking industry generally, and on small banks particularly (*i.e.*, banks with assets of $25 million or less), be minimized; and".

2. A new sentence is added to the end of the first paragraph in section 2 which reads: "The Regulations Task Force will also receive a copy of the preliminary report and will review each formal proposal before it is submitted to the Board of Directors to certify that it complies with the guidelines of this policy statement.".

3. Item "(4)" in the third paragraph of section 2 is amended to read: "(4) Alternative approaches (including flexible regulatory methods to minimize the burden for small banks) that were considered;".

4. Item "(6)" in the third paragraph of section 2 is amended to read: "(6) A cost-benefit analysis, including a small bank impact statement, for the regulation (unless the staff advises the Board of Directors of the reasons why such an analysis is not feasible and the Board of Directors agrees with that advice);".

5. Item "(d)" in section 5 is changed to read: "(d) The need to minimize the burden imposed on those affected by the regulation, especially small banks;".

By order of the Board of Directors December 20, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 79-39572 Filed 12-27-79; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA 5716]

National Flood Insurance Program; Communities with Flood-Prone Areas Subject to Section 202(A) Prohibition of Federal and Federally Related Assistance

AGENCY: Federal Insurance Administration.

ACTION: Deletion.

In the Federal Register, Docket No. FEMA 5716 appearing on page 64893 in the issue of Thursday, November 8, 1979, delete the following community from this listing:

City of Courtland, Courtland County, NY
Comm. No. 361441 ID Date 2-14-75.

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: December 4, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-39515 Filed 12-27-79; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on: Thursday, January 17,

[1] All data and other information are as provided by manufacturer.

1980; Thursday, January 24, 1980; Thursday, January 31, 1980.

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202-632-9710).

Jerome H. Ross,

Chairman, Federal Prevailing Rate Advisory Committee.

December 19, 1979.

[FR Doc. 79-39542 Filed 12-27-79; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

Pan American Bancshares, Inc.; Proposed Acquisition of Assets of Atico Mortgage Corp.

Pan American Bancshares, Inc., Miami, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission for its subsidiary, Bancshares Properties, Inc., to acquire four offices of Atico Mortgage Corporation, Miami, Florida.

Applicant states that the subsidiary would engage at these locations in the activity of mortgage banking, including originating and servicing loans and other extensions of credit secured by real estate mortgages, for its own account and for the account of others. These activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b). These activities would be performed from the offices to be acquired in Orange Park, Orlando, Tampa, and West Palm Beach, Florida, and the geographic area to be served by each office is, respectively, Orange, Duval, Hillsborough, and Palm Beach County, Florida.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 17, 1980.

Board of Governors of the Federal Reserve System, December 17, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-39539 Filed 12-27-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The Bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than January 21, 1980.

A. *Federal Reserve Bank of Philadelphia* (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylania 19105:

Philadelphia National Corporation, Philadelphia, Pennsylvania (commercial finance; Maryland, Pennsylvania,

Virginia, and the District of Columbia): to engage through its subsidiary, Congress Financial Corporation, in origination of loans secured by accounts receivable, inventory, machinery and equipment and/or other commercial finance collateral, to business and corporations. These activities would be conducted from an office located in Columbia, Maryland serving Maryland, Pennsylvania, Virginia, and the District of Columbia.

B. *Federal Reserve Bank of Cleveland* (Harry W. Hunning, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

Pittsburgh National Corporation, Pittsburgh, Pennsylvania (mortgage banking activities; Hawaii) to engage *de novo* through its subsidiary, The Kissell Company, Springfield, Ohio, in the making or acquiring and servicing for its own accounts and the accounts of others, loans and other extensions of credit. Such activities would be conducted from an office in Kailua-Kona, Hawaii and would serve metropolitan Kona and the entire island of Hawaii.

C. *Other Federal Reserve Banks* None.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39708 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

Commerce BancShares of Wyoming, Inc.; Acquisition of Bank

Commerce BancShares of Wyoming, Inc., Sheridan, Wyoming, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Security Bank of Buffalo, Buffalo, Wyoming. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 21, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39707 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

Elsie, Inc.; Formation of Bank Holding Company

Elsie, Inc., Elsie, Nebraska, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Commercial State Bank, Elsie, Nebraska. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39709 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

First of Chadron Bank Corp.; Formation of Bank Holding Company

First of Chadron Bank Corporation, Chadron, Nebraska, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1) to become a bank holding company by acquiring 95.5 percent of the voting shares of The First National Bank of Chadron, Chadron, Nebraska. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39711 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

First Denham BancShares, Inc.; Formation of Bank Holding Company

First Denham Bancshares, Inc., Denham Springs, Louisiana, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank of Denham Springs, Denham Springs, Louisiana. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 18, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39713 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

First State Agency of Lake Lillian, Inc.; Proposed Retention of General Insurance Agency Activities

First State Agency of Lake Lillian, Inc., Lake Lillian, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to retain its general insurance agency activities. These activities would be performed from offices of Applicant's subsidiary in Lake Lillian, Minnesota, and the geographic area to be served is Lake Lillian, and its surrounding area in Minnesota. Such activities have been specified by the Board in section

225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 21, 1980.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39715 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

Horizon Bancorp; Acquisition of Bank

Horizon Bancorp, Morristown, New Jersey, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent of the voting shares of The Marine National Bank of Wildwood, Wildwood, New Jersey. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39710 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

Liberty National Corp.; Proposed Acquisition of Mid-America Credit Life Assurance Co.

Liberty National Corporation, Oklahoma City, Oklahoma, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of Mid-America Credit Life Assurance Company, Oklahoma City, Oklahoma.

Applicant states that the proposed subsidiary would engage in the activities of underwriting and reinsuring credit life and credit accident and health insurance in connection with extensions of consumer credit by lending subsidiaries of Applicant. These activities would be performed from offices of Applicant's subsidiary in Oklahoma City, Oklahoma, and the geographic area to be served will be limited to the area within a 100 mile radius of the subsidiary's main office. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 21, 1979.

Board of Governors of the Federal Reserve System, December 21, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39708 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

Orbanco, Inc.; Acquisition of Bank

Orbanco, Inc. Portland, Oregon, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent of the voting shares of Lincoln Bank, Lincoln City, Oregon. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 21, 1980. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-39712 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

Treasure Valley Bancorp, Inc.; Formation of Bank Holding Company

Treasure Valley Bancorp, Inc., Fruitland, Idaho, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 90 per cent or more of the voting shares of Intermountain State Bank, Cascade, Idaho and Treasure Valley State Bank, Fruitland, Idaho. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1979.

Griffith L. Garwood

Deputy Secretary of the Board.

[FR Doc. 79-39714 Filed 12-28-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79F-0449]

BASF Wyandotte Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: BASF Wyandotte Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a sanitizing solution consisting of elemental iodine, *alpha*-alkyl (C10-C14)-*omega*-hydroxypoly(oxyethylene)poly (oxypropylene) of average molecular weight (768–837) and *alpha*-alkyl (C12-C18)-*omega*-hydroxypoly(oxyethylene)poly (oxypropylene) of average molecular weight (950–1120).

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB 3480) has been filed by BASF Wyandotte Corp., Wyandotte, MI 48192, proposing that the food additive regulations be amended to provide for the safe use of a sanitizing solution consisting of elemental iodine, *alpha*-alkyl (C10-C14)-*omega*-hydroxypoly(oxyethylene)poly (oxypropylene) of average molecular weight (768–837) and *alpha*-alkyl (C12-C18)-*omega*-hydroxypoly(oxyethylene)poly (oxypropylene) of average molecular weight (950–1120).

The potential environmental impact of this action is being reviewed. If this petition results in a regulation, and the agency concludes that an environmental impact statement is not required, the notice of availability of the environmental impact analysis report, statement of exemption, and environmental assessment report as applicable, will be published in the Federal Register as required by 21 CFR 25.25(b).

Dated: December 17, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-39392 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79M-0438]

Cooper Laboratories, Inc.; Premarket Approval of Permalens (Perfilcon A) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 (Pub. L. 94-295; 90 Stat. 539–583) of the Permalens (perfilcon A) Hydrophilic Contact Lens sponsored by Cooper Laboratories, Inc., Mountain View, CA. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by January 28, 1980.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

SUPPLEMENTARY INFORMATION: The sponsor, Cooper Laboratories, Inc., submitted an application for premarket approval of Permalens (perfilcon A) Hydrophilic Contact Lens to FDA on November 14, 1979. The Ophthalmology Device Classification Panel, an FDA advisory committee, reviewed the application and recommended approval of the application. On June 11, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (h)) (the act), soft contact lenses and solutions are not regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provided transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, as a condition to approval, FDA requires that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which the agency's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the hearing of this document.

The labeling of the Permalens (perfilcon A) Hydrophilic Contact Lens, like that of other approved soft contact lenses, states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling helps to inform lens users that they must avoid purchasing inappropriate products, e.g., solutions for use with hard contact lenses. But the restrictive labeling needs to be updated periodically to refer to new solutions FDA approves for use with an approved lens. A sponsor who does not update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41 through 58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the Federal Register of the

agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall at the next printing or at any other time as FDA prescribes by letter to the sponsor correct its labeling to refer to the new solution.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b)(21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 28, 1980, filed with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above-named office, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: December 18, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-39393 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79C-0450]

Ethicon, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Ethicon, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 in poly (*p*-dioxanone) synthetic absorbable surgical sutures.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d), 74 Stat. 402–403 (21 U.S.C. 376(d)), notice is given that a petition (CAP 9C0142) has been filed by Ethicon, Inc., Somerville, NJ 08876, proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 in poly (*p*-dioxanone) synthetic absorbable surgical sutures.

The potential environmental effects of this action have been carefully considered, and FDA has concluded that the action will not significantly affect the quality of the human environment. The environmental impact analysis report and the environmental assessment report are available upon request from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

Dated: December 12, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-39397 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

National Institutes of Health

Workshop on Assays for Identification of High Risk Individual In Autosomal Dominant Gene Cancer Family, Members; Notice of Meeting

Notice is hereby given of the workshop on Assays for Identification of High Risk Individuals in Autosomal Dominant Gene Cancer Family Members sponsored by the National Institutes of Health, National Cancer Institute, Carcinogenesis Extramural Program, Biological Carcinogenesis Branch, January 29 and 30, 1980, at the National Institutes of Health, Building 31, Conference Room 9, Bethesda, Maryland 20205.

This meeting will be open to the public on January 29 and 30 at 8:30 a.m. until adjourment, to discuss the merits and deficiencies of the individual assay systems and attempt to establish criteria, including the appropriate controls for use in evaluating the tests. Attempts will be made to define appropriate populations to be used in further evaluations of the tests. Emphasis will be placed on determining the parameters, validity, specificity and reproducibility of each test. Attendance by the public will be limited to space available.

Dr. Mina Lee Vernon, Biological Carcinogenesis Branch, Division of Cancer Cause and Prevention, National Cancer Institute, Landow Building, Room 9A–22, Bethesda, Maryland 20205, (301) 496–9740, will provide additional information.

Date: December 20, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-39519 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

President's Cancer Panel; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, January 23, 1980, Building 31C, Conference Room 4, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 1:00 p.m. to adjournment, to hear reports on activities of the President's Cancer Panel and the National Cancer Program. Attendance by the public will be limited to space available.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Richard A. Tjalma, Executive Secretary, National Cancer Institute, Building 31, Room 11A46, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5854) will furnish substantive program information.

Date: December 18, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79-39517 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-03-M

National Heart, Lung, and Blood Institute

Notice of Meeting of Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee,

National Heart, Lung, and Blood Institute, February 21–22, 1979. The meeting will be held at the Federal Building, Conference Room 6C01, 7550 Wisconsin Avenue, Bethesda, Maryland. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., 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, NHLBI, NIH, Building 31, Room 4A21, (301) 496–4236, will provide summaries of the meeting and roster of the Committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, NIH, Federal Building, Room 504, (301) 496–6931, will furnish substantive program information.

Dated: December 18, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-39518 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-08-M

Office for Civil Rights Annual Operating Plan for Fiscal Year 1980

The Office for Civil Rights (OCR) issued its Proposed Fiscal Year 1980 Annual Operating Plan (AOP) for public comment in the Federal Register on August 1, 1979 (44 FR 45255–56). The AOP sets forth the compliance and enforcement activities that OCR proposed to conduct in FY 1980.

All of the comments received related to Title IX activities. They dealt primarily with: The allocation of resources for Title IX activities; The selection of compliance review issues, particularly in postsecondary education; and The coverage of sex discrimination in certain health and human development compliance review issue areas.

The AOP was revised on the basis of these comments and updated workload statistics. The comments and the changes made in response to them are identified in the following chart.

Comment	*Change*
"Within-School Segregation" does not adequately describe the sub-issues.	The category title was changed to "Within-School Discrimination."
Secondary school athletics should be covered as a distinct category.	Secondary school athletics as a sub-issue in "Within-School Discrimination" was clarified.
Vocational training at the postsecondary level should receive more emphasis.	No change. The addition of this issue would require a diversion of investigative staff planned for allocation to other issues which OCR has determined are of higher priority. This issue will be addressed as part of the monitoring of State vocational education agencies' Methods of Administration provided for under the "monitoring section of the AOP.
The provisions of Titles VII and VIII of the Public Health Services Act should be included as an issue.	This subject has been added to the planned coverage of graduate and professional school admissions where the institutions selected for review are subject to the provisions of Titles VII and VIII. It has not been added to the undergraduate compliance review issues because it would require a diversion of investigative staff planned for allocation to other issues which OCR has determined are of higher priority.
Not enough investigative time was allocated to Title IX activities.	The allocation of investigative staff time for complaints and carryover compliance reviews was adjusted to account for actual workload as of the beginning of FY 1980. Adjustments were made to account for increased coverage of Title IX in the compliance review issues. The overall effect was an increase of time for Title IX activities from 17 percent to 18 percent.
Title IX coverage should be added to the vocational rehabilitation issue.	Title IX coverage was added to the extent that educational activities are operated by the recipients to be reviewed.

In OCR's affidavit to the court in October, we stated that at present, because the complaint workload is within manageable proportions, we anticipate no further difficulties in maintaining our scheduled compliance review activities. Thus, resources which were diverted earlier to resolve the large complaint load will be assigned to the compliance review program.

In addition, more accurate analysis of FY 1979 workload statistics identified fewer pending complaint cases than the August draft AOP projected and a higher investigator productivity rate for complaints (as described further below). Consequently, the updated statistics created available resources beyond those projected in the August draft AOP.

OCR has decided to concentrate these additional resources on health and human services programs. OCR has made this decision for several reasons. First, OCR recognizes that there has been an historical imbalance in the distribution of its resources. OCR has traditionally concentrated its enforcement of civil rights laws on education programs due to the mandates that the *Adams* and other court orders placed on resolving civil rights issues in the education sector. Second, the majority of HEW funds support health and human services programs, and the majority of HEW recipients and beneficiaries are in the health and human services sector. Third, for various reasons, individuals have filed relatively few complaints in the health and human services areas, even though compliance reviews indicated substantial noncompliance with Title VI and other civil rights statutes. Consequently, in order to ensure adequate civil rights enforcement in the health and human services sector, there is a need to focus investigator resources in the health and human services area by conducting a large number of compliance reviews.

The final AOP bases its projection of a higher productivity rate (15.5 complaints investigated per person year) on the following factors:

- During FY 79, OCR recruited and trained over 700 investigators. The productivity of these FY 1979 recruits will be significantly higher during FY 1980. OCR has also recently accelerated its plan for additional investigator training.
- In late FY 1979, OCR established and staffed the civil rights attorneys divisions in all regional offices. Daily assistance from civil rights attorneys to investigators will greatly enhance investigator productivity.
- We now have policy determinations for a number of issues which had previously been unresolved (for example, Title IX employment, Title IX intercollegiate athletics, and hair and dress code issues). In addition, during FY 1980, OCR will accelerate policy determinations on certain remaining issues which have been unresolved and are consequently preventing investigators from settling related complaints (for example, discrimination based on limited English-speaking ability, whether section 504 would prohibit a school district from denying a handicapped child an education in excess of the standard school year if that excess is required to provide the child with an appropriate education, and what limitations section 504 placed on school districts which attempt to suspend or expell a handicapped child).

Analysis of workload data also indicated that the August draft AOP projection of resources needed for conducting pregrant reviews was significantly higher than the resources actualy directed to pregrant reviews in FY 1979. The final AOP allocates the

same level of effort to pregrant reviews in FY 1980 as it allocated to those reviews in FY 1979.

The final AOP for FY 1980 follows: OCR has an authorized employment ceiling of 1700. Of these, 440 are assigned to Headquarters and 1260 are assigned to ten regional offices. The regional staff is composed of managers, supervisors, investigators, attorneys and clericals. This regional staff produces 623 person years of investigator time. These investigative person years will be assigned to compliance and enforcement work in FY 1980 as follows:

	Investigator time	
	Person years	Percent
Complaint investigations	214	34
Compliance reviews	368	59
Pregrant reviews	18	3
Monitoring	23	4
Total	623	100

Complaint Investigations

Table 1 shows projected complaint receipts, closures, and opening and ending inventories by jurisdiction. In order to determine the level of investigative staff resources required to process these complaints, the following projections were made: OCR expects to receive 5,855 complaints in FY 1980. Of these, 55 percent will require a full investigation and 45 percent can be resolved without a formal investigation or closed administratively because they are incomplete or outside OCR's jurisdiction. Based on these projections, 214 investigative years are allocated to complaints.

If these projections are not accurate, the amount of staff assigned to complaint processing will be adjusted. For example, it is possible that complaint receipts could range from a high of 7,220 to a low of 4,480. Within this range, as many as 4,693 or as few as 2,016 complaints could require a full investigation.

Adjustments in the staff assigned to complaint processing will be accomplished by adjusting the level of staff assigned to compliance reviews. If fewer complaints are received or if the percentage requiring a full investigation is smaller than projected, investigative time will be transferred from complaints to compliance reviews. Any such adjustments will be announced in a supplementary AOP and published during FY 1980.

Compliance Reviews

A total of 368 investigative years will be available to conduct compliance reivews in FY 1980. Of these, 147 investigative years will be used for reviews started, but not completed in previous years. The remaining 221 investigative years will be allocated for newly initiated reviews.

The issues to be covered in newly initiated reviews during FY 1980 are presented in Table 2. These issues were identified on the basis of survey results, findings from previous complaint investigations and compliance reviews, related research findings, and the public comments received on the Proposed AOP.

Table 2 also indicates the number of reviews to be conducted on each issue and the amount of investigative years to be assigned to each.

Pregrant Reviews

In FY 1980, OCR will review the civil rights compliance of applicants for HEW grants under the Emergency School Aid Act (ESAA) and in health and human development programs prior to the award of Federal assistance. OCR will allocate 18 investigative years to this work. Table 3 presents the distribution of investigative years for pregrant review activities.

Monitoring

During FY 1980, OCR will review recipients to determine whether they are complying with the terms of compliance agreements. These activities will include monitoring the desegregation plans of State systems of higher education, the methods of administration of State vocational education agencies and agreements entered into as a result of previous complaint investigations and compliance reviews under all authorities. OCR will allocate 23 investigative years to this work.

Summary

Table 4 summarizes the allocation of investigative years by recipient groups. Table 5 summarizes the allocation by jurisdiction.

Dated: December 14, 1979

Roma J. Stewart,

Director, Office for Civil Rights.

Table 1.—*Fiscal Year 1980 Annual Operating Plan (Projected Fiscal Year 1980 Complaint Workload)*

	Title VI	Title IX	Sec. 504	Total
Pending Oct. 1, 1979	335	614	542	1,491
Fiscal year 1980 projected receipts	1,874	1,112	2,869	5,855
Fiscal year 1980 closures	1,790	1,477	2,771	6,038
Percentage	(30)	(25)	(45)	(100)
Pending October 1, 1980	419	249	640	1,308

Table 2.—*FY 1980 Annual Operating Plan*

Compliance Review Issues

Issue	Description of Violation	Number of reviews	Investigative years required
Elementary and Secondary Education			
1. Identification of and Services to Limited English Proficiency (LEP) Children.	Discrimination against non-English speaking (NES) or limited English proficiency children (LEP) including NES and LEP handicapped children.	7	3
2. Within-School Discrimination: Classroom Assignments, Tracking and Ability Grouping, Special Education, Mainstreaming, Physical Education and Secondary School Athletics.	Discriminatory assignment of students on the basis of race, national origin, sex and/or handicap to courses, classrooms, special programs (including educable mentally retarded and gifted or talented), ability grouping, special education programs and athletic and physical education programs.	5	4
3. School Discipline: Expulsions and Suspensions.	Discriminatory disciplinary treatment of students on the basis of race, national origin, sex and/or handicap.	5	4
4. Vocational Education: Access, Admissions and Job Placement.	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and in industrial arts and home economics courses.	7	4
5. Special Purpose Schools: Program Availability and Least Restrictive Environment.	Discrimination in admissions, accessibility, treatment or employment in state administered special purpose schools on the basis of race, national origin, sex and/or handicap.	7	3
6. School Segregation	Discriminatory assignment of students to schools on the basis of race or national origin.	5	4
Postsecondary Education			
1. Program Accessibility for the Handicapped.	Lack of program accessibility and accommodations for handicapped students in school programs.	13	3
2. Graduate and Professional Schools: Admissions.	Discrimination on the basis of race, national origin, sex and/or handicap in admissions to graduate and professional schools.	7	3
3. Intercollegiate Athletics: Overall Program Equality.	Inadequate comparability of programs including interests and abilities of students and inadequate comparability of facilities provided.	[1]40	[1]9
4. Dual School Systems [2]	Discriminatory assignment of students to or establishment and continuation of dual school systems on the basis of race.		

Table 2.—*FY 1980 Annual Operating Plan—Continued*

Compliance Review Issues

Issue	Description of Violation	Number of reviews	Investigative years required
Health and Human Development			
1. Hospitals, Nursing Homes and Extended Care Facilities: Accessibility and Admissions.	Discrimination on the basis of race, national origin and/or handicap in hospital, nursing home or extended care facility accessibility and/or admissions.	27	22
2. Medicaid/Medicare: Delivery of Services.	Discrimination on the basis of race, national origin and/or handicap in the provision of Medicaid and Medicare services.	27	22
3. Hospital Services to Special Population Groups.	Discrimination by hospitals on the basis of national origin and/or handicap in providing bilingual services and services to meet the needs of visually and hearing impaired patients.	82	19
4. Welfare Agencies: Bilingual Services and Methods of Administration.	Discrimination on the basis of race, national origin and/or handicap in provision of welfare services by welfare agencies.	82	19
5. Mental Health Center/Mental Health Hospital Practices: Equal Care and Bilingual Services.	Discrimination on the basis of race, national origin and/or handicap by mental health agencies in the provision of services to clients.	44	20
6. Vocational Rehabilitation Services.	Discrimination in the provision of services and benefits to severely mentally and physically handicapped individuals, and/or discrimination on the basis of sex in the provision of educational services and benefits.	27	22
7. Child Welfare Referral Practices: Foster Care, Bilingual Services and Location of Services.	Discrimination by child welfare agencies in the provision of services and benefits to minority and/or handicapped children.	27	22
8. Title XX: Supportive Services to Elderly and Disabled Adults.	Discrimination on the basis of race, national origin and/or handicap in the provision of services and benefits to elderly and disabled adults.	82	19
9. Health Planning	Discrimination on the basis of race, national origin and/or handicap in the provision of health care which results from health planning activities conducted by health services agencies.	27	22
Total		521	[2]224

[1] Because these reviews are being scheduled to include the investigation of complaints for which resources are allocated under complaint investigations, this person year allocation is composed of 6.28 years review time and 2.72 years of complaint time.

[2] Although dual postsecondary school systems continue to be a significant civil rights issue, no new reviews will be initiated during FY 1980. See section of the AOP on monitoring for a description of FY 1980 activities on this issue.

[3] See footnote 1.

Table 3.—*FY 1980 Annual Operating Plan*

Pregrant Review Activities

Type of Review	Number of reviews	Investigative years required
ESAA	655	15
Health	1,600	3
Total	2,255	18

Table 4.—*FY 1980 Annual Operating Plan*

Investigative Years Allocated to Each Type of Recipient

Type of recipient	Complaints	Compliance reviews	Pregrant reviews	Monitoring	Total	Percent
Elementary and Secondary Schools.	116	67	15	8	206	33
Post-secondary Education Institutions.	53	40	0	12	105	17
Health and Human Development Agencies.	45	261	3	3	312	50
Total	214	368	18	23	623	100

Table 5.—*FY 1980 Annual Operating Plan*

Investigative Years Allocated to Each Jurisdiction

Jurisdiction	Complaints	Compliance reviews	Pregrant reviews	Monitoring	Total	Percent
Title VI	64	156	18	17	255	41
Title IX [1]	54	53	0	3	110	18
Section 504	96	159	0	3	258	41
Total	214	368	18	23	623	100

[1] Resources allocated to Title IX constitute only 18 percent of the total time because Title IX does not extend to most health and human development issues. However, 35 percent of the staff time devoted to elementary, secondary and postsecondary education activities will be focused on Title IX issues.

[FR Doc. 79-39496 Filed 12-27-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Idaho Wilderness Inventory, Decision Oil and Gas Overthrust Belt

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to inventory roadless areas and roadless islands of the public lands to identify those areas possessing wilderness characteristics as described in the Wilderness Act of 1964.

The Federal Register Notice of September 7, 1979 announced the proposed decision on accelerated intensive wilderness inventory for the Oil and Gas Overthrust Belt in the Idaho Falls District.

Notice is hereby given that the BLM has completed the intensive wilderness inventory for the Overthrust Belt in Idaho. The purpose of conducting this intensive inventory in advance of the statewide intensive inventory is to have wilderness data available for consideration in relation to oil and gas activities in the Overthrust Belt within the Idaho Falls District.

Following publication of the proposed inventory decisions in the September 7, 1979, Federal Register a 90-day comment period was conducted.

Those public responses received during the comment period that addressed specific factors related to wilderness charteristics were carefully analyzed. Comments that related to other resource value, resource conflicts, or that expressed opinions for or against wilderness were reviewed but were not utilized in arriving at the intended final decision. The inventory process is only for the purpose of determining wilderness characteristics; comments not related to characteristics will be analyzed during the study phase.

Following is the intended final decision:

Units With Characteristics

35-77, Henry's Lake; [1] 350 acres
37-77, Worm Creeks; [1] 40 acres
34-2, 3, 4, Islands; 770 acres

Portions of Unit 34-2 (115 acres) are identified as lacking characteristics.

Units Without Characteristics

34-8, Game Creek; 4,792 acres
36-15, Big Spring; 5,810 acres
37-88, Mt. Naomi; 240 acres
34-1, 1A, Islands; 250 acres
36-18, Rattlesnake Point; 8,365 acres

In summary, of the total of 20,732 acres intensively inventoried in the Overthrust Belt, 1,160 acres were found to have wilderness characteristics, and thus the units containing those acres are identified as Wilderness Study Areas. The remaining 19,572 acres are dropped from the wilderness inventory process.

Upon publication of this intended final decision in the Federal Register, a 30-day protest period is intitated, during which persons wishing to protest any of the intended final decisions shall have 30 days to file a written protest.

Protest should address specific inventory units and must include a clear and concise statement of reasons for the protest, including any supporting data available. Protests may be filed with the Idaho State Office or the Idaho Falls District Office of the BLM and must be postmarked or received by the end of the 30-day period, January 28, 1980.

BLM office addresses for further information on this intended final decision are as follows:

Idaho State Office, Federal Building, Box 042, 550 W. Fort Street, Boise, Idaho 83724
Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: December 18, 1979.

Robert O. Buffington,

State Director.

[FR Doc. 79-39462 Filed 12-27-79; 8:45 am]

BILLING CODE 4310-84-M

[1] Unit less than 5,000 acres dependent upon a contiguous RARE II area to meet the size criteria.

[Tentative Sale No. 68]

Southern California Outer Continental Shelf; Call for Nominations of and Comments on Areas for Oil and Gas Leasing

Purpose of Call

Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resources development with the protection of the human, marine and coastal environments, as well as assuring State and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3313.1, nominations are hereby requested for areas on the Southern California Outer Continental Shelf for possible oil and gas leasing under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.). The Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas.

These comments will be part of an information-gathering process to assemble current information on local environmental conditions within the call area so that other impacts besides the realization of hydrocarbon potential can be assessed.

Description of the Area

The area extends from Point Conception south to the U.S.-Mexico border.

Nominations will be considered for any or all of that part of the following blocks located in the OCS mapped areas listed below:

1. Outer Continental Shelf Leasing Map No. 6A, Channel Islands area: All blocks and fractional blocks except for the following:

45N 72W through 77W
46N 72W through 78W
47N 72W through 81W
48N 79W through 81W

2. Outer Continental Shelf Leasing Map No. 6B, Channel Islands area: All blocks and fractional blocks except for the following:

45N 61W through 66W

46N 62W through 71W
47N 63W through 71W

3. Outer Continental Shelf Leasing Map No. 6C, Channel Islands area: All blocks and fractional blocks except for the following:

9N 19W through 20W
10N 19W through 25W
11N 19W through 28W
12N 21W through 28W
13N 21W through 28W
14N 21W through 28W
15N 21W through 28W
16N 22W through 28W
17N 21W through 28W
18N 21W through 28W
19N 21W through 28W
20N 22W through 28W
21N 22W through 28W
22N 22W through 28W
23N 23W through 28W
24N 23W through 28W
25N 24W through 28W
26N 25W through 28W
27N 26W through 30W
28N 27W through 30W
29N 28W through 30W
30N 29W through 30W

4. Outer Continental Shelf Leasing Map No. 6D, Channel Islands area: All blocks and fractional blocks.

5. Outer Continental Shelf Leasing Map No. 6E, Channel Islands area: All blocks and fractional blocks.

6. Outer Continental Shelf Official Protraction Diagram NI 11–10, San Clemente: All blocks and fractional blocks.

7. Outer Continental Shelf Official Protraction Diagram NH 11–1, Bushnell Knoll: All blocks and fractional blocks.

8. Outer Continental Shelf Official Protraction Diagram NH 11–4, Rampart: All blocks and fractional blocks.

These blocks may be found on the following Outer Continental Shelf Protraction Diagrams and Leasing Maps:

Map and protraction No.:	Cost
6A	$1.00
6B	1.00
6C	2.00
6D	1.00
6E	1.00
NI 11–10, San Clemente	2.00
NH 11–1, Bushnell Knoll	2.00
NH 11–4, Rampart	2.00

Notice is hereby given that, effective with this publication the new OCS Official Protraction Diagrams NH 11–1, Bushnell Knoll, and NH 11–4, Rampart, are available in the Pacific OCS Office. The protraction diagrams, as well as the others listed above, may be purchased from the Manager, Pacific OCS Office, Bureau of Land Management, 1340 West Sixth Street, Room 200, Los Angeles, California 90017. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams and leasing maps, for information only, are the basic record for the description of mineral and oil and gas lease offers in the geographic area they represent.

Instructions on Call

Nominations must be described by referring to the Outer Continental Shelf Official Protraction Diagrams and Leasing Maps prepared by the Bureau of Land Management, Department of the Interior and referred to above. Only whole blocks or properly described subdivisions thereof, not less than one-quarter of a block, may be nominated. Although individual company nominations are considered to be privileged and confidential information, the names of persons or entities submitting nominations or comments will be of public record.

Those nominating twelve blocks or more are requested to arrange their nominations into three groups according to the priority of their interest.

In addition to nominations, we are seeking comments about particular geological, environmental, biological, archaeological, socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular blocks where available.

Comments should be as specific as possible in identifying individual blocks or areas which should receive special concern and analysis in any leasing decision.

Nominations and comments must be submitted not later than February 29, 1980, in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continental Shelf-Southern California," or "Comments on Leasing in the Outer Continental Shelf-Southern California," as appropriate. They must be submitted to the Manager, Pacific OCS Office, Bureau of Land Management, 1340 West Sixth Street, Room 200, Los Angeles, California 90017. Copies must also be sent to the Conservation Manager, U.S. Geological Survey, Pacific OCS Region, 1340 West Sixth Street, Room 200, Los Angeles, California 90017, and to the Director, Bureau of Land Management, Department of the Interior, Attention 540, Washington, D.C. 20240.

Use of Information from Call

Nominations will be evaluated and used along with other biological and geophysical information to determine what, if any, tracts should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographical scope of areas which can be successfully planned for a single sale, only a portion of the tracts nominated are selected for further environmental analysis and possible leasing.

Comments will be considered along with other relevant information available to the Secretary to determine what tracts should be designated for further environmental analysis and study. As a general rule, tracts which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those tracts to be developed in an environmentally safe manner.

In any event, selection of tracts for further environmental analysis does not insure that the tracts will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when that decision is made. In performing the additional environmental analyses leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of tracts for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any tracts finally selected for competitive bidding will be published in the Federal Register stating the conditions and terms for leasing, and the place, date, and hour at which bids will be received and opened.

Ed Hastey,

Associate Director, Bureau of Land Management.

Approved: December 21, 1979.

Heather L. Ross,

Deputy Assistant Secretary of the Interior.

[FR Doc. 79-39514 Filed 12-27-79; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-61]

Certain Compact Cyclotrons With a Pre-Septum; Termination

In the matter of: Certain Compact Cyclotrons With a Pre-Septum.

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, the Commission is ordering the termination of investigation No. 337–TA–61, *Certain Compact Cyclotrons with a Pre-septum,* by granting a motion by all parties to terminate this investigation (Motion

Docket No. 61–3) and accepting a consent order agreement proposed by complainant and the principal respondent.

Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission Order, Action, and Opinion. Such petitions must be in accord with § 210.56 of the Commission rules (19 CFR 210.56). Any person adversely affected by a final Commission action may appeal such action to the United States Court of Customs and Patent Appeals.

Copies of the Commission's Order and Commissioners' Opinion (USITC Publication No. 1024, December 1979) are available to the public during official working hours at the Office of the Secertary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523–0161. Notice of the institution of the Commission's investigation was published in the Federal Register of December 28, 1978 (43 FR 60674). The text of the proposed consent order agreement and the Commission's request for public comments thereon were published in the Federal Register of October 24, 1979 (44 FR 61270).

By order of the Commission.

Issued: December 21, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79–39607 Filed 12–27–79; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–76]

Certain Food Slicers; Change of Commission Investigative Attorney

In the matter of: Certain Food Slicers.

Donald R. Dinan is designated Commission Investigative Attorney for Investigation No. 337–TA–76, Certain Food Slicers replacing JoAnn Miles. The service of all papers on the Commission Investigative Attorney should henceforth be served upon Mr. Dinan, effective Wednesday, December 26, 1979.

The Secretary is requested to publish this notice in the Federal Register.

Dated: December 20, 1979.

Earl Levy,

Deputy Director, Office of Legal Services.

[FR Doc. 79–39608 Filed 12–27–79; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–72]

Certain Turning Machines and Components Thereof; Amendment to Complaint and Notice of Investigation

In the matter of: Certain Turning Machines and Components Thereof.

Upon consideration of Motion Docket No. 72–3, as certified to the Commission by the administrative law Judge on November 28, 1979, together with the supporting documents filed by the complainant and the Commission investigative attorney, and the ALJ's recommendation of November 28, 1979, that the complaint and notice of investigation be amended, the Commission is ordering the addition of the following new respondents to the complaint and the notice of investigation:

Tsugami Corpoation, 1–18–16 Shinbashi, Minato-ku, Tokyo, Japan.

REM Sales Incorporated, West Hardford, Connecticut 06107.

Copies of the Commission action and order and the Commission opinion are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street N.W., Washington, D.C. 20436, telephone (202) 523–0161.

By order of the Commission.

Issued: December 21, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79–39606 Filed 12–27–79; 8:45 am]

BILLING CODE 7020–02–M

[TA–503(a)–6 and 332–107]

President's List of Articles Which May Be Designated as Eligible Articles for Purposes of the Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 503(a) and 131(b) of the Trade Act of 1974 (hereinafter referred to as "the Act") and section 332(g) of the Tariff Act of 1930, as amended, the Commission has instituted investigation TA–503(a)–6 and 332–107 for the purpose of obtaining, to the extent practicable, information of the kind described in section 131(d) of the Act. This information is for use in connection with the preparation of advice requested by the Special Representatitive for Trade Negotiations (STR) with respect to certain listed articles as to the probable economic effects on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the United States Generalized System of Preferences (GSP).

EFFECTIVE DATE: December 20, 1979.

FOR FURTHER INFORMATION CONTACT: (1) Agricultural products, Mr. Ed Furlow (202–523–0234); (2) Textile products, Mr. Reuben Schwartz (202–523–0114); (3) Chemical products, Dr. Aimison Jonnard (202–523–0423); (4) Metals and metal products, Mr. William Wright (202–523–0275), Office of Industries, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436; (5) Legal aspects, Terry K. Smith, Esquire (202–523–0311), Office of General Counsel, at the same address.

SUPPLEMENTARY INFORMATION: On December 7, 1979, in accordance with section 503(a) and 131(a) of the Act and pursuant to the authority of the President delegated to the STR by Executive Order 11846, as amended by Executive Order 11947, the STR furnished the United States International Trade Commission the attached list of articles which are being considered for designation as eligible articles for purposes of the GSP set forth in Title V of the Act.

Specifically, the STR has requested that the Commission provide its advice, with respect to each listed article, as to the probable economic effects on U.S. industries producing like or directly competitive articles and on consumers of the elimination of the U.S. import duties under the GSP.

In providing its advice, the STR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive-need" limitations specified in section 504(c) of the Act.

Section 504(d) of the Act exempts from one of the competitive-need limits in section 504(c) articles for which no like or directly competitive article was being produced in the United States on the date of enactment of the Act. Accordingly, pursuant to the authority of section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and in conformity with the delegation of authority from the President to him of Executive Order 11846 as amended by Executive Order 11947, the STR requested that the Commission also provide advice with respect to whether products like or directly competitive with any products described in the attached tariff categories were being produced in the United States on January 3, 1975.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t., on January 24, 1980. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be field with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, January 18, 1980.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 6, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: December 21, 1979.

Kenneth R. Mason,

Secretary.

BILLING CODE 7020-02-M

Articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences

TSUS or TSUSA item	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration]
130.45	Oats, hulled or not hulled
	Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in schedule 1, part 8, subpart B of the Tariff Schedules of the United States Annotated):
	[Beans; cabbage; chickpeas or garbanzos; black-eye cowpeas; onions; peas; pimientos; tomatoes; water-chestnuts]
	Other:
	[Packed in salt, in brine, or pickled]
	Other:
	[Palm hearts]
	Other:
	[Frozen]
	Other:
	[Artichokes; asparagus; potatoes, dehydrated]
141.8180 1/	Other
or	or
141.8180 pt.	Tender cactus
or	or
141.8180 pt.	Pre-cooked rice
	Berries, fresh, or prepared or preserved:
	[Fresh or in brine; dried]
	Otherwise prepared or preserved:
	[Blueberries; black currants, gooseberries, lingon or partridge berries, and loganberries]
	Other berries:
	Frozen:
	[Strawberries]
146.7550 2/	Other
or	or
146.7550 pt.	Blackberries
	Grapes, fresh, or prepared or preserved:
	[Fresh (in bulk, or in crates, barrels or other packages); dried]
147.77	Otherwise prepared or preserved
or	or
147.77 pt.	Grape must

Note: See footnotes at end of table.

Articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences--Con..

TSUS or TSUSA item	Article
	Olives, fresh, or prepared or preserved:
	[Fresh]
	In brine, whether or not pitted or stuffed:
	Not ripe and not pitted or stuffed:
	[Not green in color and not packed in airtight containers of glass, metal, or glass and metal]
148.44	Other
148.50	Pitted or stuffed
	[Dried]
148.56	Otherwise prepared or preserved
	Papayas, fresh, or prepared or preserved:
148.60	Fresh
	Wrapper tobacco (whether or not mixed or packed with filler tobacco):
170.10	Not stemmed
170.15	Stemmed
170.65 or 170.65 pt.	Cigarettes or Bidis
	Cigars and cheroots:
170.66	Cigars each valued 15 cents or over
175.36	Poppy seed
	Yarns of wool or hair:
	[Yarns of wool, colored, and cut into uniform lengths of not over 3 inches, in immediate packages or containers not over 6 ounces in weight including the weight of the immediate package or container]
	Other:
	[Of angora rabbit hair]
307.64 or 307.64 pt.	Other or Yarns, handspun and handdyed
	Cordage:
	Of vegetable fibers:
	Of jute:
	Not bleached, not colored, and not treated:
315.80	The singles yarn of which measures under 720 yards per pound
315.85	The singles yarn of which measures 720 yards or over per pound

Articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences--Con.

TSUS or TSUSA item	Article
	Cordage (con.):
	Of vegetable fibers (con.):
	Of jute (con.):
	Bleached, colored, or treated:
315.90	The singles yarn of which measures under 720 yards per pound
315.95	The singles yarn of which measures 720 yards or over per pound
	Woven fabrics, of silk:
	Wholly of silk:
	Jacquard-figured:
337.40	Degummed, bleached, or colored
	Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled with rubber or plastics material, or laminated with sheet rubber or plastics:
	Of man-made fibers:
355.81	Over 70 percent by weight of rubber or plastics
	Floor coverings of pile or tufted construction, of textile materials:
	In which the pile was inserted or knotted during weaving or knitting:
	With pile hand-inserted or hand-knotted:
	[With over 50 percent by weight of the pile being hair of the alpaca, guanaco, huarizo, llama, misti, suri, or any combination of these hairs]
	Other:
360.15	Valued over 66-2/3 cents per square foot
	Floor coverings not specially provided for, of textile materials:
	Of wool:
	Woven, but not made on a power-driven loom:
361.44	Valued over 30 cents per square foot

Articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences--Con.

TSUS or TSUSA item	Article
	Tapestries, including hand-worked petit-point and other needle-point tapestries, all the foregoing of textile materials:
	[Gobelin and other hand-woven tapestries fit only for use as wall hangings, and valued over $20 per square foot]
	Other:
	Of wool:
364.22 or 364.22 pt.	Valued over $2 per pound or Hand-woven mohair tapestries
	Bags and sacks, or other shipping containers, of textile materials:
	Of vegetable fibers, except cotton:
385.45	Not bleached, not colored, and not rendered nonflammable
	Articles not specially provided for, of textile materials:
	[Lace or net articles, whether or not ornamented, and other articles ornamented]
	Other articles, not ornamented:
	Of man-made fibers:
	[Knit (except pile or tufted construction); pile or tufted construction]
	Other:
	[Artificial flowers]
	Other:
	[Tents and tarpaulins; shoe uppers; inked ribbons]
389.6260 or 389.6260 pt.	Other or Nylon sleeping bags
	Alcohols, monohydric, unsubstituted:
427.88	Ethyl for nonbeverage purposes
	Pipes and tubes and blanks therefor, all the foregoing of iron (except cast iron) or steel:
	Welded, jointed, or seamed, with walls not thinner than 0.065 inch, and of circular cross section:
	Other than alloy iron or steel:
	0.375 inch or more in outside diameter:
	[Suitable for use in boilers, superheaters, heat exchangers, condensers and feedwater heaters]
	Other:
610.3265	Over 16 inches in outside diameter

Articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences--Con.

TSUS or TSUSA item	Article
	Unwrought aluminum:
	[Of uniform cross-section throughout its length, the least cross-sectional dimension of which is not greater than 0.375 inch, in coils]
	Other:
618.02	Aluminum other than alloys of aluminum
	Alloys of aluminum:
	[Aluminum silicon]
618.06	Other
	Unwrought lead:
	[Lead bullion]
	Other:
624.0330	Alloyed

1/ Effective January 1, 1980, TSUSA item 141.8180 will be discontinued (redesignated as 141.78, .82, .83, .84, .8630, .87, and .8860).

2/ Effective January 1, 1980, TSUSA item 146.7550 will be discontinued (redesignated as 146.71, .74, and .77).

[FR Doc. 79-39605 Filed 12-27-79; 8:45 am]
BILLING CODE 7020-02-C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket Nos. M-79-253-C, M-79-256-C, M-79-257-C, M-79-258-C, M-79-259-C, and M-79-261-C]

Consolidation Coal Co.; Petitions for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, filed six (6) essentially identical petitions to modify the application of 30 CFR 75.1700 (Barriers around oil and gas wells) to mines located in West Virginia as follows:

Docket No.	Mine	Location (county)
M-79-253-C...	Blacksville No. 1 Mine.	Monongalia.
M-79-256-C...	Blacksville No. 2 Mine.	Monongalia.
M-79-257-C...	Pursglove No. 15 Mine.	Monongalia.
M-79-258-C...	Consol No. 20 Mine...	Marion.
M-79-259-C...	Humphrey No. 7 Mine.	Monongalia.
M-79-261-C...	Robinson Run No. 95 Mine.	Harrison.

The petitions were filed in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petitions is as follows:

1. Mining is approaching areas containing petroleum wells. Most of the wells drilled prior to 1930, are abandoned, and the sands are nearly depleted of oil and gas. No appreciable volume of gas comes from the abandoned petroleum reservoirs.

2. Research by the United States Bureau of Mines (BuMines) and the Energy Research and Development Administration (ERDA) disclosed plugging methods which can effectively prevent well gas from entering the mine during regular mining operations while, at the same time, allowing additional safety and operational benefits that are not possible under 30 CFR 75.1700.

3. As an alternative to the provisions of 30 CFR 75.1700 (to establish and maintain barriers around oil and gas wells), the petitioner proposes to seal the Pittsburgh Coal Seam from the surrounding strata at the affected wells by using a technique developed through experience and technology derived from its past successful well plugging program. To date, more than 30 abandoned oil and gas wells have been effectively plugged, and more than 8 of these have been successfully mined through.

4. The technique is approved by the State of West Virginia, effective June 10, 1978.

5. The petitioner agrees to take a number of precautionary actions (listed in the petition) before, during, and after starting plugging and mining operations in the affected areas.

6. The petitioner believes that the proposed alternate method will provide no less protection to the miners than that afforded by 30 CFR 75.1700.

7. The petitions are similar to one previously approved and granted for the petitioner's Dents Run Mine in Marion County, West Virginia, on or about October 29, 1979 (Docket No. M-79-103-C).

Request for Comments

Persons interested in any of these petitions may furnish written comments on or before January 28, 1980. Comments relating to only one petition may be made separately; however, the applicable docket number must be clearly stated. If comments apply to more than one of the listed petitions, each comment must mention individually the docket number, or numbers, to which the comment applies. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petitions are available for inspection at that address.

Dated: December 17, 1979.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 79-39505, Filed 12-27-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-270-C]

Kentland-Elkhorn Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kentland-Klkhorn Coal Corporation, Lebanon, Viriginia 24266 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Kentland No. 1 Mine located in Pike County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. Abandoned areas of the mine now being used as a section return have become inaccessible and unsafe to travel due to loose unsupported roof and numberous massive roof falls throughout.

2. The abandoned areas or return airways are not part of the mine's escapeway system.

3. Attempts to restore these abandoned airways would result in unnecessary exposure of the miners to hazardous conditions.

4. As an alternative to making weekly examinations for hazardous conditions in the return airways, the petitioner proposes the following:

a. The section foreman shall examine the quantity and quality of air flow at a specified point daily and record the results in the pre-shift and on-shift examination book.

b. The petitioner will establish two evaluation points at the abandoned mine opening on the surface and examine them weekly as required by 30 CFR 75.305.

5. The petitioner believes the alternative method will at all times guarantee the same measure of protection afforded by the standard and that application of the standard would result in a diminution of safety to the miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before January 28, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Viriginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 17, 1979.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 79-39506 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-6255]

Bethlehem Steel Corp., Lebanon, Pa; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on October 24, 1979 in response to a worker petition received on October 16, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing

steel industrial fasteners at the Lebanon, Pennsylvania plant of Bethlehem Steel Corporation. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Average employment of production workers increased during January-October 1979 compared to the same period of 1978. Employment in each of the first three quarters of 1979 increased over the comparable quarters of 1978. Additional workers had been hired in early 1979 because of anticipated increased sales to the automobile industry. The separations that occurred in October 1979 resulted mainly when automobile orders did not meet projected sales.

Conclusion

After careful review, I determine that all workers of Bethlehem Steel Corporation, Lebanon, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 17th day of December 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-39504 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-28-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on January 15–16, 1980 at the New Department of Labor Building, Room N–5437, Third Street and Constitution Avenue, NW., Washington, D.C. The meeting will begin at 9:00 a.m. The public is invited to attend.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act in 1970 (Pub. L. 91–596) to advise the Secretary of Labor and the Secretary of Health, Education and Welfare on matters relating to the administration of the Act.

The Committee will hear and discuss reports on the activities of OSHA and NIOSH. Some of the topics will be: An overview of NIOSH research; Safety and health hazards associated with the production of synthetic fuels; An update on 11c activities.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairman of the committee to the extent which time permits.

For additional information contact: Clarence Page, Division of Consumer Affairs, Occupational Safety and Health, Room N–3635, U.S. Department of Labor Building, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8024.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C., this 26th day of December 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-39706 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 79-80; Exemption Application No. D-1061]

Exemption From the Prohibitions for Certain Transactions Involving the United Precision Machine & Engineering Co. Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the loan of $120,000 by United Precision Machine and Engineering Company Profit Sharing Plan (the Plan) to United Precision Machine and Engineering Company (the Employer).

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 16, 1979 notice was published in the Federal Register (44 FR 66106) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was posted on the employee bulletin board and hand delivered or mailed to all plan participants. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest

of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefits of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Therefore, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan of $120,000 by the Plan to the Employer, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and representations contained in the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of December 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39587 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-996]

Proposed Exemption for Certain Transactions Involving Leep Homes Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of model homes by Leep Homes (Leep) to the Leep Homes Profit Sharing Plan (the Plan) and the leasing of those homes by the Plan to Leep. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, Leep, and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 4, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-996. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Robert N. Sandler of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a)(1), 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c) (1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of Leep pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. Leep is a corporation actively engaged in the construction of residential housing units, including single family residences, townhouse developments, planned unit developments and condominium developments. Its business activities are centered primarily in the San Francisco Bay Area. As in many residential developments, model homes demonstrating the available plans are constructed for public inspection and, occasionally, for use as an on-site office for sales representatives for the development. At the conclusion of the development and sale of the constructed properties, the model homes are sold at the then prevailing market price.

2. The applicants propose that the Plan purchase model homes from Leep, and that the Plan receive a net return on its investment of 10 percent per annum in the form of rental. The Plan will at all times limit its investment in the model homes to 25% of Plan assets. For purposes of the 25% limitation, the homes will be valued at the purchase price which the Plan paid to Leep. Leep will make the initial acquisition of the tract of land to be developed and incur all expenses in the improvement and development of the land.

3. The Plan and Leep will execute a purchase agreement, the terms of which will remain the same for all similar purchases. The purchase price, which is Leep's cost, will be the acquisition cost of the land, the actual cost of construction of the home and an overhead factor of 7.2 percent of actual construction costs, including land

acquisition cost. The 7.2 percent figure is based on Leep's historical experience regarding the costs of construction of residential housing. The purchase price will be paid by the Plan to Leep upon completion of construction of the home. All payments by the Plan to Leep will be made in cash.

4. Prior to the purchase by the Plan of any model home constructed by Leep, Leep will offer to sell to the Plan all of the model homes which it then owns. The Plan trustees who make investment decisions for the Plan are Elwood Leep, president and treasurer of Leep and its sole shareholder, and leonard B. Bearden, Sr., vice-president. The Plan trustees would then submit all of the offers to an independent real estate investment advisor for his review of the properties themselves and terms and conditions of the offers. The independent investment advisor would have the power to reject any or all of the offers on behalf of the Plan. Any offers not rejected by the independent investment advisor would be accepted by the Plan trustees on behalf of the Plan, unless doing so would exceed the 25% limitation on Plan investment in model homes. If the 25% limitation would be exceeded, the Plan trustees will resubmit the offers to the independent investment advisor and request that he reject additional offers in order to come within the 25% limitation.

5. Each home is to be completed for eventual sale. Any and all additions to the home to make it usable as a model are to be made at the expense of Leep. Leep will pay a monthly rental to the Plan which will represent a net return of 10 percent per annum on all cash payments made by the Plan, accruing from the date of each payment. Such rental payments will continue until the home is sold. The trustees of the Plan will submit all proposed leases to the independent real estate investment advisor. The Plan will not enter into any lease unless the investment advisor determines that the rental payments under the lease, and other terms and conditions, are fair and equitable to the Plan in light of then-existing market conditions.

6. All taxes relating to any model home purchased by the Plan will be paid by Leep. All maintenance expenses will be paid by Leep and at the conclusion of its use as a model, each home will be repaired at Leep's expense, so as to be saleable as a new house. At the conclusion of a home's use as a model, Leep will sell the home and lot on behalf of the Plan. The Plan will receive the gross sales price and Leep will incur all selling expenses, including payment of a real estate agent's commission, if one should be involved.

7. The exemption will be a temporary exemption expiring five years from the date it is published in the Federal Register. Currently, the Plan leases one model home to Leep, which has been leased since 1973.

8. In summary, it is represented that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act, because:

a. The Plan will purchase the model homes at a price representing Leep's cost of building the homes;

b. The Plan will limit its investment in model homes to 25% of Plan assets;

c. The exemption will be temporary, expiring five years from the time it is granted;

d. Leep will pay all taxes and maintenance expenses relating to the model homes.

e. At the conclusion of a home's use as a model, Leep will, at its own expense, make any repairs necessary to make it saleable as a new house;

f. At the conclusion of a home's use as a model, Leep will sell the house on behalf of the Plan and incur all selling expenses, including payment of a real estate agent's commission, if one should be involved; and

g. A qualified independent real estate investment advisor would review all model homes that Leep owns and have the power to accept or reject any homes offered for sale to the Plan by Leep, subject only to the 25% limitation on Plan investment in the model homes.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties, including the trustees of the Plan and all participants and beneficiaries of the Plan, on or before January 2, 1980. The notice will contain a copy of the notice of proposed exemption, will inform each recipient of his right to comment or request a hearing with regard to the proposed exemption, and will be hand-delivered to all interested parties.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of 404(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for

cash of model homes by Leep to the Plan and the leasing of such model homes back to Leep, as long as the Plan's investment in the model homes does not exceed 25% of Plan assets. The exemption will be a temporary exemption, expiring five years from the date it is published in the Federal Register. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39586 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1476]

Proposed Exemption for a Transaction Involving the Stanley D. Crawford, D.D.S., P.C. Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a limited partnership interest from the Stanley D. Crawford, D.D.S., P.C. Profit Sharing Plan (the Plan) to Dr. Stanley D. Crawford. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 8, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216; Attention: Application No. D-1476. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen, of the Department of Labor, telephone (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Roger D. Nittler, CPA as a duly authorized representative of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganizatrion Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan holding assets on August 31, 1979 valued at $45,565.16. As of July 24, 1979 the Plan had four participants. The Plan trustee is Stanley D. Crawford who is also an officer, director and the sole shareholder of Stanley D. Crawford, D.D.S., P.C.

2. On August 13, 1976 Dr. Crawford signed, on behalf of the Plan, a subscription agreement to purchase a unit of limited partnership interest in the First Mate Restaurant Ltd. (the Partnership). The subscription cost was $24,250, payable in two installments. The Plan paid $16,250 on the date of subscription and $8,000 on May 1, 1977. At the time of this purchase the value of Plan assets were $28,929.

3. On September 25, 1979 the limited partners were notified that the Partnership was currently in the process of dissolution and liquidation pursuant to the partnership agreement. It was expected that the outstanding debts will far exceed the value of any assets left in the Partnership. It is alleged that the monetary loss to the Plan would be $24,250, the amount of its original investment.

4. Dr. Crawford has proposed to purchase, for cash, the Plan's investment in the Partnership for the original acquisition cost plus interest at a rate of 8% per annum from the time of such acquisition.

5. In summary, the applicant represents that the proposed sale meets the criteria of section 408(a) of the Act because: (1) It will be a one time transaction for cash; and (2) it will afford the Plan an opportunity to avoid the loss of a substantial amount of Plan assets. With respect to the transaction covered by this exemption the trustee represents that the subject transaction is appropriate for and in the best interests of the Plan.

Notice of Interested Persons

Within ten days of publication of the proposed exemption in the Federal Register, all participants and beneficiaries of the Plan will receive by personal delivery a copy of the notice of pendency and a statement to the effect that interested persons have the right to comment on the proposed exemption, and the right to request that a hearing be held.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the

exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of a limited partnership interest in First Mate Restaurant, Ltd. by the Plan for $24,250 plus 8% per annum from the date of acquisition by the Plan to Dr. Stanley D. Crawford, provided that the sales price is not less than the fair market value of the Plan's partnership interest at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39585 Filed 12-27-79; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-604]

Proposed Exemption for Certain Transactions Involving Westdale Co. Retirement Plan and Trust

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale for cash of real property by the Westdale Company Retirement Plan and Trust (the Plan) to the Westdale Company (the Employer), a party in interest. The proposed exemption, if granted, would affect Leonard Westdale, Sr., beneficiaries of the Plan and the Employer.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before January 28, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. D-604. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Horace C. Green, of the Department of Labor, telephone (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. In March 1971, the Employer contributed to the Plan 3.34 acres of unimproved real property (the Property) located on the east side of East Beltline Avenue, N.E. in Grand Rapids, Michigan. The Property represented a contribution of $19,000 to the Plan.

2. The Plan was terminated on March 31, 1974 and received a favorable determination from the Internal Revenue Service on May 18, 1976. All the participants in the Plan were given the option to withdraw the vested amounts in their accounts as of March 31, 1975 or leave the vested amounts in the Plan with no further option or opportunity to withdraw the same except by retirement, death or occurrence of other events permitting distribution under the terms of the Plan. All participants, except Leonard Westdale, Sr., the president and majority stockholder of the Employer, chose to take distribution of their vested amounts.

3. The Plan has listed the Property for sale and/or lease to others, without success. Thus it has been, and continues to be, a non-income producing asset of the Plan. All related costs and expenses (interest, taxes, assessments, etc.) of the Property, as of August 24, 1979, amounted to $5,931.42. As a result, the Plan proposes to sell the Property for cash to the Employer at its fair market value, as determined by an independent appraiser. No commission will be charged with respect to the sale.

4. An independent appraisal, dated March 6, 1979, by the Blandford Appraisal Company valued the Property at $70,000. In arriving at an estimated value for the Property, the appraiser had

assumed that all outstanding sewer and water assessments (special assessments) had been paid, however, as of August 24, 1979, there was a balance due of $7,686. Based on the above, the fair market value of $70,000 has been reduced to $62,314, to reflect the unpaid balance of the special assessments. The Employer will assume the liability of the special assessments and there will be no further costs to the Plan after the sale. In the opinion of the appraiser, the existing appreciation of the Property is a result of (1) the reconstruction and widening of East Beltline Avenue from the location of the Property to an area extending 3 miles south from the Property, (2) the recent availability of public sewer and water and (3) the demand for and value of sites for suburban office development.

5. In summary, the applicant represents that the proposed transaction meets the criteria for an exemption under section 408(a) of the Act because (1) it is a one time transaction for cash, (2) it would allow the Plan to sell the Property for a large gain, without paying any sales commissions, at a price determined by an independent appraiser, (3) it would allow the Plan to dispose of a non-income producing asset, (4) since the Plan has listed the Property for sale and/or lease to others, without success, the sale to the Employer appears to be the only solution and (5) the Plan trustee has determined that the proposed transaction is appropriate for the Plan and is in the best interests of the Plan participant and beneficiaries.

Notice to Interested Persons

Since Leonard Westdale, Sr. is the only participant remaining in the Plan and the president and majority stockholder of the Employer, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale for cash by the Plan to the Employer of the Property, provided that the price is not less than the fair market value of the Property on the date of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of December 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-39584 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-81; Exemption Application No. D-1293]

Exemption From the Prohibitions for Certain Transactions Involving the William E. Dill, D.D.S., P.A. Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of real property by the William E. Dill, D.D.S., P.A. Profit Sharing Plan (the Plan) to a party in interest.

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 30, 1979 notice was published in the Federal Register (44 FR 62382) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by William E. Dill, D.D.S., P.A. (the Employer), William E. Dill (the Trustee) and Dill Properties Inc. (Dill Properties). The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at

the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that he has complied with the notice requirements contained in the proposed exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a citrus grove, not to include the growing crop, legally described as Lots 22 and 23 of Lakeview Heights, Orange County, Florida, by the Plan to Dill Properties for cash consideration of $60,500 provided that this amount is not less than the fair market value at the time of sale.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 19th day of December 1979

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-39533 Filed 12-27-79; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-82; Exemption Application No. D-1279]

Exemption from the Prohibitions for Certain Transactions Involving the Samaritan Medical Clinic, Inc., Profit Sharing Plan and the Samaritan Medical Clinic, Inc., Pension Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the cash sale of limited partnership units owned by the Samaritan Medical Clinic, Inc. Profit Sharing Plan and the Samaritan Medical Clinic, Inc. Pension Plan (the Plans) to SRMC Rentals, a party in interest.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 19, 1979, notice was published in the Federal Register (44 FR 60442) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed on behalf of the Plans' trustees. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was hand delivered to each of the Plans' participants. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These

provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Therefore, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plans of limited partnership units in the Century Properties Fund X to SRMC Rentals for the sum of $16,500, provided this price is not less than the fair market value at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 19th day of December 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39582 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1587]

Proposed Exemption for Certain Transactions Involving the Wells Fargo Bank Yield-Tilt Market Fund for Employee Benefit Trusts

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would enable the purchase or sale of securities between the Wells Fargo Bank Yield-Tilt Market Fund for Employee Benefit Trusts (the Yield-Tilt Fund) and certain employee benefit plans (the Plans) with respect to which the Wells Fargo Bank (the Bank) is a fiduciary. The proposed exemption, if granted, would affect participants and beneficiaries of such Plans, the Bank, the Yield-Tilt Fund, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 28, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20216, Attention: Application No. D–1587. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW, Washington, DC 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department of Labor, telephone (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by the Bank, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions to the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

(1) The Yield-Tilt fund is a collective investment fund maintained by the Bank acting as trustee for trusts constituting parts of pension and profit sharing plans qualified under section 401(a) of the Code for which the Bank acts as trustee, co-trustee or investment manager. The Yield-Tilt Fund is designed to replicate as closely as possible the rate of return (income and capital appreciation) reflected by the Standard and Poor's 500 Composite Stock Index (Index) with the exception that the Yield-Tilt Fund will attempt to exceed the rate of return of the Index by investing the greatest proportion of its assests in the stocks of the Index having the highest dividend yields.

(2) The Yield-Tilt Fund commenced operations on April 15, 1979 and its portfolio on June 20, 1979 consisted of 362 common stocks included in the Index. The Yield-Tilt Fund's investments are selected and maintained by application of a computerized mathematical formula based solely on quantitative information concerning dividend rates and risk levels published by sources independent of the Bank. The common stocks selected by the computer for the Yield-Tilt Fund are selected on a predetermined mathematical basis to establish and maintain the desired dividend yield and risk level characteristics of its investment portfolio. Accordingly, portfolio adjustments are occasionally necessitated by dividend yield changes. Since stock purchase and sale decisions are not influenced by the individual or

relative investment merit of the stocks, portfolio turnover is expected to be 5% or less.

(3) Certain stocks considered by the Bank to be "imprudent" investments under a screening procedure for potential bankruptcies are not purchased. Should a stock held by the Yield-Tilt Fund become "imprudent" under this screening procedure, it would be sold either in conventional market transactions or in negotiated transactions with institutional investors having no relationship with the Yield-Tilt Fund or the Bank.

(4) The Index is a readily availabe and broad measure to the stock market. It is composed of 500 common stocks listed on the New York Stock Exchange and includes 425 industrial stocks, 15 rail stocks, and 60 utility stocks. These stocks are estimated to account for about three-quarters of the value of all listed common stocks and about two-thirds of the value of all publicly traded common stocks in the United States.

(5) The index is weighted by market capitalization and measures the aggregate market value of the 500 stocks in comparison with the average aggregate market value of the stocks comprising the Index during the 1941–43 base period. The weight of each stock in the Index is determined by multiplying the number of shares outstanding by the current market price and dividing the result by the sum of the total number shares of the 500 stocks outstanding times their respective current prices. This weighting by market capitalization means that over 50 percent of the Index is accounted for by the stocks of the 30 largest companies such as International Business Machines Corporation, American Telephone and Telegraph Company, Exxon Corporation, Eastman Kodak Company and General Motors Corporation. The Index is adjusted from time to time to reflect consolidations, acquisitions and mergers, delistings from the New York Stock Exchange, increases in stock outstanding and other changes.

(6) The Bank represents that the aggregate amount invested in the Yield-Tilt Fund is increasing primarily due to demand for a highly diversified investment vehicle which reflects the performance of the equity market as measured by the Index. The reinvestment of cash dividends also contributes to the growth of the Yield-Tilt Fund.

(7) In order to maintain the proper relationship to the Index while growing, the Yield-Tilt Fund must purchase additional shares of the stocks which make up the Yield-Tilt Fund in determinate relative amounts. Shares of the stock available to be purchased may be held by a Plan in a separate investment portfolio which is managed and controlled by a trustee or investment manager unrelated to the Bank. (The Bank is a trustee or investment manager of a separate portion of the assets of the same Plan.) Plan representatives have asked the Bank whether the Yield-Tilt Fund may purchase such stock directly from the Plan if the decision to sell such stock is made by the unrelated trustee or investment manager for reasons entirely independent of the Yield-Tilt Fund's need to purchase the stock. Such a direct sale would eliminate brokerage commissions otherwise payable by the Plan on the sale. The Yield-Tilt Fund would also benefit from the direct purchase of the needed stock from the Plan by avoiding the brokerage commissions it would have incurred on the purchase. Similarly, if the Yield-Tilt Fund experiences a withdrawal of funds by participating trusts and a subsequent contraction in size at a future date, the Yield-Tilt Fund may wish to sell stocks directly to various Plans desiring to buy the stocks in order to eliminate brokerage commissions.

(8) The Bank wishes to enable the Yield-Tilt Fund to enter into the above described purchase and/or sale transactions with the Plans. The Bank represents that neither it nor an affiliate (as defined in Department of Labor regulation § 2510.3–21(e)) will exercise discretionary authority or control over the management of that portion of a Plan's assets (other than any assets which may be invested in the Yield-Tilt Fund) which are involved in the purchase and/or sale transactions with the Yield-Tilt Fund. In addition, should a stock held by the Index Fund become an investment that may not be held by the Yield-Tilt Fund under its screening procedure, it would be sold either in conventional market transactions or in negotiated transactions with institutional investors having no relationship with the Yield-Tilt Fund or the Bank.

(9) The prices paid to or by the Plans under this proposal for all securities that are traded on the New York Stock Exchange would be set by the closing price on the Exchange on the day of the offer. In the case of any stocks in the Yield-Tilt Fund which are traded in the Over-The-Counter Market, the price would be the average of the highest bid and lowest asked price on the NASDAQ quotation system at the end of trading on the day of the offer.

Notice to Interested Persons

The trustees of all the Plans currently investing in the Yield-Tilt Fund will be notified of the proposed exemption by mail within thirty days of the date the notice of proposed exemption is published in the Federal Register. The notification will include a copy of the notice of proposed exemption and will advise these persons of their right to comment and/or request a hearing within the period of time specified in this notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406 (b)(1) and (b)(3) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to a purchase or sale by the Yield-Tilt Fund of securities from and/or to various plans as described above.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

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

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39579 Filed 12-27-79; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-84; Exemption Application No. D-1215]

Exemption for the Prohibitions for Certain Transactions Involving the C. Hugh Bishop & Associates, Inc., Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale for cash of real property by the C. Hugh Bishop & Associates, Inc., Profit Sharing Plan (the Plan) to C. Hugh Bishop, a party in interest. Since Mr. Bishop is the sole stockholder and employee of C. Hugh Bishop & Associates, Inc. and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Internal Revenue Code of 1954 (the Code).

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs. Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20216, (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 12, 1979 notice was published in the Federal Register (44 FR 59011) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, for the transaction described in an application filed by the trustee of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of its participant and beneficiaries; and

(c) It is protective of the rights of the participant and beneficiaries of the plan.

The taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale by the Plan of two parcels of unimproved real property located on Highway 105, approximately 3 miles east of Monument, Colorado, to C. Hugh Bishop for the fair market value at the date of sale or the original purchase price plus all expenses and costs since acquisition, whichever is greater.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

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

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39580 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-83; Exemption Application No. D-1198]

Employee Benefit Plans; Exemption From the Prohibitions for Certain Transactions Involving the Iowa Realty Co. Profit Sharing Plan and Trust

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits, retroactively and prospectively, the purchase of land by the Iowa Realty Company, Inc. (the Employer) from the Iowa Realty Company Profit Sharing Plan and Trust (the Plan), in order that the agreement between the Plan and the Employer, entered into prior to the effective date of the Employee Retirement Income Security Act of 1974, can be concluded in a manner which is beneficial for the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20216, (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 19, 1979 notice was published in the Federal Register (44 FR 60438) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for transactions described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department. The notice also stated that notice of the pending exemption and a copy of the notice of pendency as published in the Federal Register was to be given to all participants and beneficiaries of the Plan no later than ten days following publication in the Federal Register. The applicant represents that it has fully complied with this notice provision.

The notice of pendency was issued and the exemption is being granted solely by the Department because effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, retroactively and prospectively, to the purchase during 1976 of portions of two parcels of land (the Hopkins Farm and the Meredith Farm, respectively) and within 120 days after the grant of this exemption, to the proposed purchase of five parcels of land (the Oleson Farm or Bondurant Land, the Staples Farm, the Life Investors Farm, and the remainder of the Hopkins Farm and Meredith Farm) by the Employer from the Plan for a cash purchase price which will be the highest sum as determined by one of the following alternatives:

(a) The original cost of each parcel plus an appreciation of 6 percent per year from date of acquisition to the date of sale. Added to this amount will be any costs or improvements paid or contracted for by the Plan; or

(b) The appraised value, as of November 30, 1978, as determined by Arthur J. Fraham and Associates without adjustments for commissions, error factor, or other items; or

(c) The higher of two appraised current fair market values for each parcel of land, as determined individually and separately, at or near the date of sale to the Employer, by two qualified and independent appraisers, plus any cost incurred by the Plan which was not included in the appraisals.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 19th day of December, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-39581 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-29-M

Wage and Hour Division

[Administrative Order No. 655]

Special Industry Committee for All Industry in American Samoa, Appointment; Convention; Notice of Hearing

1. Pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205, 206(a)(3)], and Reorganization Plan No. 6 of 1950 (3 CFR, 1949–53 Comp., p. 1004) and 29 CFR 511, I hereby appoint special Industry Committee No. 14 for American Samoa.

2. Pursuant to section 6(a)(3) and section 8 of the Act, as amended (29 U.S.C. 206(a)(3), 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR 511, I hereby:

(a) Convene the above-appointed industry committee.

(b) Refer to the industry committee the question of the minimum rate or rates for all industry in American Samoa to be paid under section 6(a)(3) of the Act, as amended.

(c) Give notice of the hearing to be held by the committee at the time and placed indicated.

The industry committee shall investigate conditions in such industry and the committee, or any authorizied subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

The Committee shall meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 11 a.m. on April 28, 1980, in the Rainmaker Hotel, Pago Pago, American Samoa.

3. The rate or rates recommended by the committee shall not exceed the rates prescribed by sections 6(a) and 6(b) of the Act, as amended by the Fair Labor Standards Amendments of 1977. These rates are $3.10 during calendar year 1980, and $3.35 thereafter.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry than may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR 511.10, which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within industry, in making such classifications and in determining the minimun wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (a) Competitive conditions as affected by transportation, living, and production costs; (b) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (c) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. The Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information he has assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, as soon as it is completed. The committee will take offical notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The procedure of this industry committee will be governed by the provisions of Title 29, Code of Federal Regulations, Part 511. Copies of this part of the regulations will be available at the Office of the Governor in Pago Pago, American Samoa, and at the National Office of the Wage and hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested person shall file six copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210. Each prehearing statement shall contain the data specified in § 511.8 of the regulations and shall be filed not later than April 18, 1980. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, D.C., this 21st day of December 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-39557 Filed 12-27-79; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Advisory Committee; Notice of Meetings

December 21, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

1. Date: January 15, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 314. Purpose: To review NEH Summer Stipend applications in American Literature submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.
2. Date: January 16, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 1134. Purpose: To review NEH Fellowships in Category C applications in Reading, Theory and Rhetoric submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.
3. Date: January 18, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 807. Purpose: To review NEH Summer Stipend applications in German, Slavic and European Film submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.
4. Date: January 18, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 309. Purpose: To review NEH Fellowships in Category C applications in Humanities for Two-Year College Teachers submitted to the National

Endowment for the Humanities for projects beginning after June 1, 1980.

5. Date: January 18, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 307. Purpose: To review NEH Fellowships in Category C applications in Sociology and Literature submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.
6. Date: January 18, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 500. Purpose: To review NEH Fellowships in Category B applications submitted to the National Endowment for the Humanities for projects beginning after May 1, 1980.
7. Date: January 19, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 314. Purpose: To review NEH Summer Stipend applications in Contempory Literature, and Literary Theory and Criticism submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.
8. Date: January 21, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 1134. Purpose: To review NEH Fellowships in Category C applications in Humanities for Two-Year College Teachers submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.
9. Date: January 22, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 807. Purpose: To review NEH Summer Stipend applications in Linguistics, Speech, Communications, Composition, Rhetoric, and Theater submitted to the National Endowment for the Humanities for projects beginning after May 1, 1980.
10. Date: January 23, 1980. Time: 9:00 a.m. to 5:30 p.m. Room: 314. Purpose: To review NEH Summer Stipends applications in English Literature: Restoration to the Present submitted to the National Endowment for the Humanities for projects beginning after June 1, 1980.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1979, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

If you desire more specific information, contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW., Washington, D.C. 20506, or call 202–724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 79-39638 Filed 12-27-79; 8:45 am]

BILLING CODE 7536-01-M

Humanities Panel Advisory Committee; Notice of Changes

This is to announce changes in two meetings of the Humanities Panel Advisory Committee.

1. The meeting to be held on January 3–4, 1980 in Room 897, National Endowment for the Humanities, 806 15th St., N.W., Washington, D.C. to review Museums and Historical Organizations Humanities Projects Program applications submitted to the National Endowment for the Humanities for projects beginning after April 1, 1980 has been changed. It will be held in Room 807 of the National Endowment for the Humanities on January 9–10, 1980.

2. The meeting to be held January 10, 1979 in the 5th Floor Conference Room, National Endowment for the Humanities, 806 15th St., N.W., Washington, D.C. to review NEH Libraries Humanities Projects Program applications submitted to the National Endowment for the Humanities for projects beginning after April 1, 1980 has been changed. It will be held in Room 911 on January 16, 1980.

Both of these meetings were announced on page 70937 of the Federal Register dated December 10, 1979.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 79-39639 Filed 12-27-79; 8:45 am]

BILLING CODE 7536-01-M

Humanities Panel Advisory Committee; Notice of Meeting

December 26, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–364 as amended,) notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street, NW., Washington, DC 20506, in room 314, from 9 am to 5:30 pm on Saturday, January 12, 1980.

The purpose of the meeting is to review NEH Fellowships in Category B applications submitted to the National Endowment for the Humanities for projects beginning after May 1, 1980.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW., Washington, DC 20506, or call area code 202–724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 79-39640 Filed 12-27-79; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Anticipated Transients Without Scram; Meeting

The ACRS Subcommittee on Anticipated Transients Without Scram (ATWS) will hold an open meeting on January 25, 1980, in Room 1046, 1717 H St., NW., Washington, DC 20555. Notice of this meeting was published December 20, 1979.

The agenda for subject meeting shall be as follows:

Friday, January 25, 1980; 8:30 a.m. Until Conclusion of Business

The Subcommittee will discuss proposed resolution of ATWS with representatives of the NRC Staff.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul A. Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 20, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-39562 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold an open meeting on January 23–24, 1980, in Room 1046, 1717 H St., NW., Washington, DC 20555. Notice of this meeting was published December 20, 1979.

The agenda for subject meeting shall be as follows:

Wednesday, January 23, Approximately 11:00 a.m. (following the ACRS Subcommittee

meeting on the Surry Station) until conclusion of business. Thursday, January 24, 8:30 a.m. until the conclusion of business.

The Subcommittee will review the status of unresolved generic safety items involving pressure vessels, steam generators, and other pressure boundary components in its cognizant area of review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio G. Igne (telephone 202/634-3314) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 20, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-39564 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on the Surry Nuclear Station; Meeting

The ACRS Subcommittee on the Surry Nuclear Station will hold a meeting on January 23, 1980 in Room 1046, 1717 H St., NW, Washington, DC 20555 to continue its review of the Surry Station steam generator replacement program. Notice of this meeting was published December 20, 1979.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, January 23, 1980; 8:30 a.m. Until the Conclusion of Business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Virginia Power and Electric Company, and their consultants, and other interested persons.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), that, should such sessions be required, it is necessary to close these sessions to protect proprietary information. See 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber (telphone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be discussed at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the Swem Library, College of William and Mary, Williamsburg, VA 23185.

Dated: December 20, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-39565 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Licensee Event Reports (LERs); Meeting

The ACRS Subcommittee on Licensee Event Reports (LERs) will hold an open meeting on January 23, 1980, in Room 1167, 1717 H St., NW., Washington, DC 20555. Notice of this meeting was published December 20, 1979.

The agenda for subject meeting shall be as follows:

Wednesday, January 23, 1980; 11:30 a.m. Until Conclusion of Business

The Subcommittee will discuss the evaluation of LER information with representatives of NRC's newly formed Office of Analysis and Evaluation of Operational Data.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: December 20, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-39566 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on January 10-12, 1980, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on December 20, 1979.

The agenda for the subject meeting will be as follows:

Thursday, January 10, 1980

8:30 A.M.-12:30 P.M.: Executive Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities.

The Committee will discuss proposed ACRS comments and recommendations to the U.S. Congress regarding the NRC Safety Research Program.

Portions of this session will be closed as necessary to discuss information the premature disclosure of which would frustrate the ACRS ability to perform its statutory function.

1:30 P.M.-5:30 P.M.: Meeting with NRC Staff (Open)—The Committee will hear and discuss reports from representatives of the NRC Staff regarding proposed NRC action plans to implement recommendations of the President's Commission and other studies of the Three Mile Island, Unit 2 accident.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to these items.

5:30 P.M.-6:30 P.M.: Executive Session (Open)—The Committee will discuss proposed methods to strengthen the role of the ACRS in accordance with the recommendations of the President's Commission on the accident at Three Mile Island.

Friday, January 11, 1980

8:30 A.M.-10:30 A.M.: Meeting with NRC Staff (Open)—The Committee will hear reports and will discuss proposed plans for NRC Implementation of the

Bulletins and Orders resulting from the accident at Three Mile Island.

10:30 A.M.–12:30 P.M.: Meeting with NRC Staff (Open)—The Committee will hear presentations and discuss proposed changes in NRC criteria for siting of nuclear powerplants (NUREG–0625).

1:30 P.M.–6:30 P.M.: Executive Session (Open)—The Committee will discuss proposed comments and recommendations regarding the NRC Safety Research Program and the NRC plans to implement the recommendations of the President's Commission and others on TMI–2.

Portions of this session will be closed as necessary to discuss Proprietary Information and information the premature disclosure of which would frustrate the ACRS ability to perform its statutory function.

Saturday, January 12, 1980

8:30 A.M.–4:00 P.M.: Executive Session (Open)—The Committee will continue its discussion of proposed ACRS comments and recommendations regarding the NRC safety research program; NRC plans to implement recommendations of the President's Commission and others on TMI–2; implementation of NRC Bulletins and Orders resulting from the TMI–2 accident; proposed changes in NRC criteria for siting nuclear facilities; and proposed changes to strengthen the ACRS role.

The Committee will hear reports from its Subcommittees on Babcock and Wilcox Light Water Reactors and on ACRS Procedures.

The future schedule for Committee activities will also be discussed.

The Committee will complete discussion of items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information related to matters being considered, and to protect information the premature release of which would frustrate the ACRS ability to perform its statutory function.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1979 (44 FR 56408). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to protect Proprietary Information (5 U.S.C. 552b(c)(4)) and to protect information the premature release of which would frustrate the Committee in the performance of its statutory function (5 U.S.C. 552b(c)(9)(B)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EST.

Dated: December 20, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-39567 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-318]

Baltimore Gas & Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 24 to Facility Operating License No. DPR–69 issued to Baltimore Gas & Electric Company, which revised Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 (the facility) located in Calvert County, Maryland. The amendment is effective as of its date of issuance.

The amendment revises the Appendix A technical Specifications of the facility to increase the measurement/calculational uncertainties for peaking factors F_r and F_q from 5.1 and 5.8 percent to 6.0 and 7.0 percent, respectively.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 27, 1979, as supplemented October 1, 1979, (2) Amendment No. 24 to License No. DPR–69, 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 Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 11th day of December 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-39568 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-251]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. DPR–41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of the Turkey Point Nuclear Generating, Unit No. 4 (the facility) located in Dade County, Florida. The amendment is effective as of the date of issuance.

The amendment permits continued operation of the Turkey Point Plant, Unit No. 4 for an additional two effective full power months from that authorized by Amendment No. 41 dated June 15, 1979 for a total of eight effective full power months from June 1, 1979 at which time the steam generators shall be inspected.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 7, 1979, (2) Amendment No. 43 to License No. DPR-41, 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 Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 14th day of December, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 79-39569 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-445 and 50-446]

Negative Declaration Supporting Amendments No. 3 to CPPR-126 and CPPR-127 Relating to Change in Ownership Interests, Comanche Peak Steam Electric Station Units Nos. 1 and 2, Texas Utilities Generating Co., et al.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the amendments to Construction Permits CPPR-126 and CPPR-127 relating to changes in ownership interests in the Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, located in Somervell County, Texas. The construction permits are issued to the Texas Utility Generating Company. The amendments would include the Texas Municipal Power Agency and the Brazos Electric Power Cooperative, Incorporated, as co-owners of the facility with the present owners.

In accordance with 10 CFR Part 51, the Commission's Division of Site Safety and Environmental Analysis has prepared an environmental impact appraisal (EIA) for the amendment. The Commission has concluded that an environmental impact statement for this action is not warranted, because there will be no adverse environmental impacts affecting the quality of the human environment attributable to the proposed action that would be in addition to those impacts evaluated in the Commission's Final Environmental Statement for Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, issued in June 1974. A negative declaration is, therefore, appropriate.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the local public document room located at the Somervell County Public Library, P.O. Box 417, Glen Rose, Texas. A copy of the EIA may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Md., this 18th day of December 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-39559 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-438 and 50-439]

Negative Declaration Supporting: Extension of Construction Permits Nos. CPPR-122 and CPPR-123; Expiration Date for the Bellefonte Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the Tennessee Valley Authority's (permittee) request to extend the expiration date of the construction permit for the Bellefonte Nuclear Plant, Units 1 and 2 (CPPR-122 and CPPR-123) which is located in Jackson County, Alabama. The permittee requested a 39 month extension for the Unit 1 permit to March 1, 1983 and a 39 month extension for the Unit 2 permit to December 1, 1983, to allow for completion of construction of the Bellefonte Nuclear Plant.

The Commission's Division of Site Safety and Environmental Analysis (staff) has prepared an environmental impact appraisal relative to this change to CPPR-122 and CPPR-123. Based upon this appraisal, the staff has concluded that an environmental impact statement for this particular action is not warranted because pursuant to the Commission's regulations in 10 CFR Part 51 and the Council of Environmental Quality's regulations, the Commission has determined that this change to the construction permits is not a major federal action significantly affecting the quality of the human environment.

The envionmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555; and at the Scottsborao Public Library, 1002 South Broad Street, Scottsboro, Alabama 35768.

Dated at Bethesda, Md., this 5th day of December.

For the Nuclear Regulatory Commission.

Donald E. Sells,

Acting Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

FR Doc. 79-39561 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312SP]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this proceeding.

Richard S. Salzman, Chairman
Dr. John H. Buck
Thomas S. Moore [1]

Dated: December 18, 1979.

C. Jean Bishop,

Secretary to the Appeal Board.

[FR Doc. 79-39570 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

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[1] Effective January 2, 1980.

[Dockets Nos. 50-438 and 50-439]

Tennessee Valley Authority, Bellefonte Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Dates

Tennessee Valley Authority is the holder of Construction Permit Nos. CPPR-122 and CPPR-123 issued by the Atomic Energy Commission[1] on December 24, 1974, for construction of the Bellefonte Nuclear Plant, Units 1 and 2, presently under construction at the Company's site in Jackson County, Alabama.

On October 15, 1979, the applicant filed a request for an extension of the completion dates. Construction has been delayed due to:

(1) Labor problems in obtaining and training welders and craftsmen,

(2) Delay of deliveries of material, including valves, hangers, embedment materials and piping,

(3) Additional modifications and requirements as a result of the Three Miles Island accident; and

(4) Difficulties in obtaining acceptable contracts bids for instrumentation and controls.

This action involves no significant hazards consideration; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in the staff evaluation, dated December 14, 1979. The preparation of an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the Order other than that which has already been predicted and described in the Commission's Final Environmental Statement for the Bellefonte Nuclear Plant, Units 1 and 2, published in June 1974. A Negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as are the above stated documents, for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555 and at the local public document room establishment for the Bellefonte Nuclear Plant, Units 1 and 2 facility in the Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama 35768.

It is hereby ordered, That the latest completion date for CPPR-122 be extended from December 1, 1979 to March 1, 1983 and for CPPR-123 from September 1, 1980 to December 1, 1983.

[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day continued under the authority of the Nuclear Regulatory Commission.

Date of Issuance: December 17, 1979.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Acting Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-39550 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-445 and 50-446]

Texas Utilities Generating Co., Dallas Power & Light Co., Texas Electric Service Co., Texas Power & Light Co., Texas Municipal Power Agency, and Brazos Electric Power Cooperative, Inc.; Issurance of Amendments to Construction Permits

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Construction Permit No. CPPR-126 and Amendment No. 3 to Construction Permit No. CPPR-127. The amendment reflects the addition of two new co-owners of the Comanche Peak Steam Electric Station, Units 1 and 2 (the facilities). Initially, the construction permits were issued to Texas Utilities Generating Company, Dallas Power and Light Company, Texas Electric Service Company, and Texas Power and Light Company. Amendment No. 3 adds as co-owners the Texas Muncipal Power Agency and Brazos Electric Power Cooperative, Inc. Texas Utilities Generating Company has sole responsibility for the design, construction, and operation of the facilities, which are located in Somervell County, Texas.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the amendments.

Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated December 26, 1978, and supplementary information dated December 14 and 22, 1978, February 22, March 1, July 19, September 18, November 6 and 19, 1979, (2) Amendment No. 3 to Construction Permit No. CPPR-126, (3) Amendment No. 3 to Construction Permit No. CPPR-127, (4) the Commission's related Safety Evaluation, (5) the Environmental Impact Appraisal and (6) the Negative Declaration supporting the amendments to the construction permits. 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 Somervell County Public Library, On the Square, Glen Rose, Texas 76043. In addition, a copy of the above items (2), (3), (4), (5) and (6) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Md., this 18th day of December 1979.

For the Nuclear Regulatory Commission.

Robert L. Baer,

Chief, Light Water Reactors Branch No. 2, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-39558 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has pursuant to the Decision of its Atomic Safety and Licensing Appeal Board dated September 6, 1979, issued Amendment No. 22 to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised the license for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment modifies License Condition 2.E. relating to antitrust matters.

For further details with respect to this action, see (1) Amendment No. 22 to License No. NPF-3 and (2) the Decision of the Atomic Safety and Licensing Appeal Board dated September 6, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio. A copy of both items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 12th day of December 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-39571 Filed 12-27-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Intergovernmental Science, Engineering, and Technology Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel (ISETAP); Transportation, Commerce, and Community Development Task Force.

Date: January 17, 1980 1:30 p.m.-4:30 p.m.

Place: Annapolis Hilton, Annapolis, Maryland 301/268-7555.

Type of meeting: Open.

Contact person: Ms. Deborah Rudolph, Staff Director, ISETAP Transportation, Commerce, and Communty Development Task Force, Office of Science and Technology Policy, Executive Office of the President, 202/395-4596 or 202/426-4208.

Minutes of the meeting: Executive minutes of the meeting will be available from the office of Ms. Rudolph.

Agenda

1. Update on Needs Identification Activities of the Department of Commerce, Housing and Urban Development, and Transportation.
2. Definition of Activities for 1980 To Follow Up on Needs Identification Process.

William J. Montgomery,

Executive Officer, OSTP.

[FR Doc. 79-39641 Filed 12-27-79; 8:45 am]

BILLING CODE 3170-01-M

Intergovernmental Science, Engineering, and Technology Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel (ISETAP); Science and Technology Transfer Task Force.

Date: January 18, 1980, 4:00 p.m.-6:00 p.m.

Place: Annapolis Hilton, Annapolis, Maryland, 301-268-7555.

Type of meeting: Open.

Contact person: Mr. Robert Goldman, Staff Director, ISETAP, Science and Technology Transfer Task Force, Office of Science and Technology Policy, Executive Office of the President, 202-395-4596.

Minutes of the meeting: Executive minutes of the meeting will be available from the office of Mr. Goldman.

Agenda

1. Review of Actions Taken at ISETAP Full Panel Meeting;
2. Design Guidelines for Use by ISETAP Staff for the Implementation of Actions Taken at Full Panel Meeting.

William J. Montgomery,

Executive Officer, OSTP.

[FR Doc. 79-39642 Filed 12-27-79; 8:45 am]

BILLING CODE 3170-01-M

Intergovernmental Science, Engineering, and Technology Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel (ISETAP); Full Panel Meeting.

Date: January 18, 1980, 8:30 a.m.-3:30 p.m.

Place: Annapolis Hilton, Annapolis, Maryland, 301-268-7555.

Type of Meeting: Open.

Contact Person: Dr. Joseph Clark, Executive Secretary, ISETAP, Office of Science and Technology Policy, Executive Office of the President, 202-395-4596.

Minutes of the meeting: Executive minutes of the meeting will be available from the office of Dr. Clark.

Agenda

1. Welcome, Introduction, and Task Force Status Reports.
2. Update on Current ISETAP and Other Related Activities:
   A. Science & Technology Transfer Task Force Meeting of November 9-10, 1979;
   B. ISETAP Staff Retreat;
   C. AAAS Evaluation Planning Meeting.
3. Discussion of Organizational and Programmatic Action Items.
4. Determination of Resource and Program Priorities.
5. Information Items (Update on selected projects).

William J. Montgomery,

Executive Officer, OSTP.

[FR Doc. 79-39643 Filed 12-27-79; 8:45 am]

BILLING CODE 3170-01-M

Intergovernmental Science, Engineering, and Technology Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel (ISETAP); Natural Resource and Environment Task Force.

Date: Wednesday, January 16, 1980, 2:00 p.m.-5:00 p.m.

Place: State Capitol Building, Room 130, Denver, Colorado.

Type of Meeting: Open.

Contact Person: Mr. Leonard Slosky, Staff Director, ISETAP, Natural Resource & Environment Task Force, Office of Science and Technology Policy, Executive Office of the President, 303-839-2471.

Minutes of the meeting: Executive minutes of the meeting will be available from the office of Mr. Slosky.

Agenda

1. Progress Report on Landsat;
2. Review of Hazardous Waste Management Report;
3. Review Department of Interior Project;
4. Discuss Work Program for Coming Year.

William J. Montgomery

Executive Officer, OSTP.

[FR Doc. 79-39644 Filed 12-27-79; 8:45 am]

BILLING CODE 3170-01-M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Public Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act that the first meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavior Research will be held in Room 2010 of the New Executive Office Building, 1726 Jackson Place, N.W., Washington, D.C. from 1:00 p.m. to 5:00 p.m. on Monday, January 14, 1980, and from 9:00 a.m. to 3:00 p.m. on Tuesday, January 15, 1980.

The meeting will be open to the public. The agenda of this Commission meeting will include (1) discussion of the responsibilities mandated under the Commission's charter (see attachment) (2) review of the relevant work in the fields covered by the mandate, and (3) procedures to be followed in fulfilling the mandated responsibilities.

Records shall be kept of all Commission proceedings and will be available for public inspection at the Commission's Office, located in Suite 555, 2000 K Street, N.W., Washington, D.C. 20006.

For further information contact: Mary Ann Orlando, Suite 555, 2000 K Street, N.W., Washington, D.C., phone: 202/653-8053.

Mary Ann Orlando,

Deputy Staff Director.

Charter

President's Special Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research

Purpose

This Commission was established by Executive Order No., 12184, dated December 17, 1979, to investigate and study ethical problems in medicine and biomedical and behavioral research, and to report its findings and recommendations for legislation or administrative action to the President and the Congress and to each federal agency to which a recommendation applies.

Authority

The President has directed that the Commission shall adhere to the provisions of Title III of Public Law 95-622. It is also subject to the provisions of Public Law 92-463, which sets forth standards for the formation and use of advisory committees.

Functions

1. The Commission shall undertake studies of the ethical and legal implications of:

A. the differences in the availability of health services as determined by the income or residence of the persons receiving the services;

B. the requirements for informed consent to participation in research projects and to otherwise undergo medical procedures;

C. the matter of defining death, including the advisability of developing a uniform definition of death;

D. voluntary testing, counseling, and information and education programs with respect to genetic dieseases and conditions, taking into account the essential equality of all human beings, born and unborn;

E. current procedures and mechanisms designed (i) to safeguard the privacy of human subjects of behavioral and biomedical research (ii) to ensure the confidentiality of individually identifiable patient records, and (iii) to ensure appropriate access of patients to information contained in such records; and

F. such other matters relating to medicine or biomedical or behavioral research as the President may designate for study by the Commission.

2. The Commission may, on its own initiative or at the request of the head of a Federal agency, undertake an investigation or study of any other appropriate matter which relates to medicine or biomedical or behavioral research (including the protection of human subjects of biomedical or behavioral research) and which is consistent with the purposes of this act (Title III, Section 301 of Public Law 95-622).

3. In order to avoid duplication of effort, the Commission may, in lieu of, or as part of, any study or investigation required or otherwise conducted, use a study or investigation conducted by another entity if the Commission sets forth its reasons for such use.

4. Upon the completion of each investigation or study undertaken by the Commission (including a study or investigation which merely uses another study or investigation), it shall report its findings (including any recommendations for legislation or administrative action) to the President and the Congress and to each Federal agency to which a recommendation in the report applies.

5. The Commission shall biennially report to the President, the Congress, and appropriate Federal agencies on the protection of human subjects of biomedical and behavioral research. Each such report shall include a review of the adequacy and uniformity of:

A. the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or support; and

B. the implementation of these rules, policies, guidelines, and regulations by such agencies, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

6. The Commission may at any time publish and disseminate to the public, reports respecting its activities.

Structure

The Commission shall consist of eleven members appointed by the President as follows:

Three of the members shall be appointed from individuals who are distinguished in biomedical or behavioral research;

Three of the members shall be appointed from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care;

Five of the members shall be appointed from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than a biomedical or behavioral science), the social sciences, the humanities, health administration, government, and public affairs.

No individual who is a full-time officer or employee of the United States may be appointed as a member of the Commission. The Secretary of Health, Education, and Welfare, the Secretary of Defense, the Director of Central Intelligence, the Director of the Office of Science and Technology Policy, the Administrator of Veterans' Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Commission.

No individual may be appointed to serve as a member of the Commission if the individual has served for two terms of four years each as such a member.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

Members shall be appointed for terms of four years, except that, of the members first appointed, four shall be appointed for terms of three years and three shall be appointed for terms of two years, as designated by the President at the time of appointment.

Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

The Chairman of the Commission shall be appointed by the President, from among the members of the Commission, by and with the advice and consent of the Senate.

The Commission may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed subject to the provisions of Title V of the United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of Title V of the United States Code, but at rates of individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this title.

The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

The Commission shall promptly arrange for such security clearances for its members and appropriate staff as are necessary to obtain access to classified information needed to carry out its duties under this title.

The Commission shall not disclose any information reported to or otherwise obtained by the Commission which is exempt from disclosure under subsection (a) of section 552 of Title V, United States Code, by reason of paragraphs (4) and (6) of subsection (b) of such section.

The Administrator of General Services shall provide the Commission on a reimbursable basis such administrative support service as the Commission may request, and will perform all Federal Advisory Committee functions in behalf of the Commission, excepting the submission of reports as required by the legislation.

Seven members of the Commission shall constitute a quorum for business, but a lesser number may conduct hearings.

Meetings

The Commission may hold meetings at the call of the Chairman or at the call of a majority of its members.

The Commission may for the purpose of carrying out this title hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable.

Compensation

Members of the Commission shall be paid at the rate of $170.00 per day for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of Title V of the United States Code.

Annual Cost Estimate

The estimated annual cost for the operations and functions of the Commission including compensation, the cost of approximately seven person years of staff support for the work of the Commission, travel expenses and contract services is $1,200,000 for fiscal year 1980, $2,100,000 for fiscal year 1981, $2,300,000 for fiscal year 1982, and $750,000 for fiscal year 1983.

Report

By December 15 of each year, the Commission shall report to the President, the Congress, and appropriate Federal agencies on the activities of the Commission during the fiscal year ending in such year. Each such report shall include a complete list of all recommendations made to Federal agencies by the Commission during the fiscal year and the actions taken by the agencies upon such recommendations, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

Termination Date

Unless renewed by appropriate action prior to its expiration, the Commission will terminate on December 31, 1982.

Approved: December 20, 1979.

Douglas B. Huron,

Senior Associate Counsel to the President.

[FR Doc. 79-39577 Filed 12-27-79; 8:45 am]

BILLING CODE 6820-AV-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16442; File No. SR-Amex-79-15]

American Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

Pursuant to Section 19(B)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 7, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. proposes to adopt new Rules 601 through 619 regarding Exchange arbitrations, replacing existing Rules 601 through 610. The new rules incorporate the Uniform Code of Arbitration for resolving disputes between investors and member firms.

Statement of Basis and Purpose

New Rules 601 through 619 are being adopted to conform Amex arbitration rules to the proposed Uniform Arbitration Code developed by the Securities Industry Conference on Arbitration ("SICA"). The Amex is one of the ten self-regulatory organizations which are members of SICA. The purpose of the proposed rule change is to provide investors with a simple and inexpensive procedure for resolution of controversies with broker-dealers.

The proposed Rules are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) of the Act in particular in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest. They do so by providing improved uniform procedures for the arbitration of disputes involving members and member organizations of the Exchange.

Comments Received From Members, Participants or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule changes.

Burden on Competition

The Amex has determined that no burden on competition will be imposed by the proposed rule changes.

On or before February 1, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 110 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before January 18, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

December 19, 1979.

[FR Doc. 79-39650 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16446]

Receipt of Amendments to Joint Industry Plan

December 21, 1979.

On November 20, 1979, the participants in the consolidated quotation system ("CQS") submitted to the Commission various amendments to the joint industry plan (the "Plan") authorized pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") governing and implementing the operation of the CQS.

I. Description of Amendments

A. Amendments Relating to NASD Participation in the Plan

The Plan participants have proposed the amendment of Sections I(j), VI(c), VI(d) and IX(c) of the Plan and the addition of a new Section III(d) to the Plan. Among other things, these proposals would provide that at some future date the Plan may be amended and submitted to the Commission for approval: (i) To provide for a 'CQ Network C' for unlisted, over-the-counter NASDAQ securities; (ii) to name the NASD as the network's administrator thereof, with all of the rights and authority with respect to 'CQ Network C' that the network's administrators for CQ Network A and B have under the CQ plan with respect to their respective networks; (iii) to properly allocate income and expenses in relation to unlisted, over-the-counter NASDAQ securities; and (iv) to make such other changes as deemed necessary at that time.

B. Amendments Relating to the Regulatory Halt Provision

The Plan participants have proposed the deletion of Section IX(a) of the Plan and the amendment of Section IX(b) of the Plan. Section IX(a) of the Plan, as originally filed with the Commission, provided that, during a regulatory halt of trading in a security called by the "primary" exchange, all Plan participants must cease making

available quotation information in that security to the Plan Processor. The Commission determined to condition its temporary authorization of the Plan on the Plan participants not implementing this provision of the Plan and requested the Plan participants to execute and file amendments to the Plan eliminating this provision.[1] The amendment to Section IX(b) of the Plan would provide that each Plan participant shall be authorized to suspend the furnishing of quotation information in any "eligible security" for any reason deemed adequate by it. Any Plan participant which does so suspend furnishing of quotation information shall immediately advise the Plan processor of its actions and reasons therefor.

C. Amendments Relating to Financial Arrangements Among the Participants

The Plan participants have proposed the amendment of Section X(b)(i) of the Plan. Section X(b) of the Plan provides for the sharing of income and expenses associated with making available Network A and Network B quotation information. Specifically, as to each network, it provides that a participant's "Annual Share" of net income for any calendar year will be measured by the number of transactions reported by that participant during that year in the consolidated transaction reporting system as compared with all transactions reported by all participants during that year. The amendment would modify the definition of the term "Annual Share" to exclude those transactions reported in those securities as to which an exemption has been granted to a participant from the requirements of Rule 11Ac1-1 under the Act.

II. Request for Comment

In order to assist the Commission in determining whether to approve the proposed amendments, interested persons are invited to submit their views and comments on the proposal to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before January 18, 1980. The amendments to the Plan will be available for public inspection in the Commission's public reference room. All such communications should refer to File No. 4-281.

[1] *See* Securities Exchange Act Release No. 14415 (July 28, 1978) 43 FR 34851; Securities Exchange Act Release No. 15511 (January 24, 1979) 44 FR 6230.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79-39649 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16429/Dec. 17, 1979; File No. SR-CBOE-79-13]

Chicago Board Options Exchange, Inc.; Proposed Rule Change By Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) (the "Act"), notice is hereby given that on November 28, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

(Brackets indicate deletions, italics indicate new material)

Rule 6.45

. . . Interpretation and Policies:

.01 [The Floor Procedure Committee has adopted the following guideline regarding orders to sell at a price of *1/16th:] When a Board Broker or Order Book Official is displaying, pursuant to Rule 7.7, limit orders to sell at 1/16th which have priority pursuant to Rule 6.45, no Floor Broker, Board Broker or Order Book Official shall hold a market order to sell that series. Whenever this condition occurs, any such market order held by a Floor Broker,* Board Broker[s] *or* Order Book Official[s] [and Floor Brokers] shall [immediately return any held orders to the member firm's floor communication station clearly marked "Unable 1/16th limit in book." The member intitiating the order on the floor shall immediately transmit a request for a cancellation or a change to a limit order back to the office originating the order.] *be considered a limit order to sell at a price of 1/16th, and the Floor Broker, Board Broker or Order Book Official shall change the market sell order to reflect a limit price of 1/16th.*

The Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing rules change is as follows:

The purpose of the proposed rule change is to eliminate a requirement, which has proven unworkable in practice, that all market sell orders held by Floor Brokers, Board Brokers and Order Book Officials be returned to the member firm offices originating the orders for resubmission as limit orders to sell at 1/16th whenever a 1/16th offer is displayed on the limit order book.

A market order is defined as an order to be executed at the best price obtainable when that order reaches the trading post. When the public limit order book is displaying sell orders at a price of 1/16th, the book is offering to sell at the lowest price available in the CBOE's marketplace. The market order cannot be executed by offering to sell at a lower price (unless it can be submitted as an accommodation liquidation offer), and the limit offers in the book at a price of 1/16th are entitled to priority at that price. Limit orders on the book to sell at a price of 1/16th necessarily have priority over all other sell orders. To obtain promptest execution, a market sell order must be converted to a 1/16 limit sell order and queued with other sell orders at that price to await execution. The sooner the market sell order can be converted to a 1/16 limit sell order and queued, the better the seller's position in the queue.

The proposed amendment would allow the market sell order to be changed to a limit sell order at a price of 1/16th without resubmitting the order to the originating member firm office. The current requirement that necessitates such a resubmission involved an unwarranted clerical burden and delayed entry of the order into the book.

The basis under the Act for the proposed rule change is Section 6(b)(5) since the change will facilitate transactions in securities permitting brokers to change market sell orders so that they can be placed on the book as 1/16th limit sell orders when the book is displaying a 1/16th offer.

No comments were solicited or received on the proposed rule change.

The Exchange does not believe that the proposed rule change will impose any burden on competition.

On or before February 1, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in

the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 18, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

December 17, 1979.

[FR Doc. 79-39651 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16428; SR-CSE-79-8]

Cincinnati Stock Exchange; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

December 17, 1979.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on November 20, 1979, the Cincinnati Stock Exchange ("CSE"), 209 Dixie Terminal Building, Cincinnati, Ohio 45202, filed with the Commission copies of a proposed rule change which would amend Section 9.3 of Article II of the By-Laws of the Exchange, concerning the valuation by and sale to the Exchange of proprietary memberships, to limit the amount to be paid by the CSE, upon written demand, in redeeming proprietary membership certificates. Under the proposed amendment, the CSE would pay 80 percent of a certificate's value where redemption of a proprietary membership is sought because a member has died or has a bona fide intention of retiring permanently from the broker-dealer business. The CSE would pay 50 percent of the value of a certificate where redemption is sought by a member without a bona fide intention of retiring from the broker-dealer business. These percentages are currently in effect under the present Section 9.3, but were scheduled to increase on January 1, 1980. The value of a proprietary membership is computed by dividing the adjusted net capital of the CSE as of the valuation date by the number of certificates of proprietary membership outstanding as of that date. The proposal also would allow the CSE to hold back a portion of the redemption price until after the end of the fiscal year so that adjustments in the value can be made to reflect year-end audit results.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR-CSE-79-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in order that the amounts which the CSE pays when redeeming proprietary membership certificates may be frozen at the current percentages rather than rising on January 1, 1980, as was previously scheduled. The CSE states that the proposed rule change is necessary to insure the maintenance of a net capital account sufficent to assure its continued operations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George Fitzsimmons,

Secretary.

[FR Doc. 79-39562 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16441; File No. SR-CSE-79-5]

The Cincinnati Stock Exchange; Proposed Rule Change by Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on November 20, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Article IV, Section 2 of the By-Laws of the Cincinnati Stock Exchange ("Exchange") is proposed to be amended as follows: (brackets indicate words to be deleted and italics indicate words to be added).

2. Unlisted Trading Privileges

[No security shall be granted unlisted trading privileges on the Exchange and no securities shall be eligible to continue to enjoy unlisted trading privileges unless the issuer thereof shall meet the requirements for listing set forth in Section 1.3. of this Article IV.]

No application shall be made to the Securities and Exchange Commission for the extension of unlisted trading privileges to any security unless the issuer thereof shall meet the requirements for listing set forth in Section 1.3. of this Article IV. In the event that an issuer whose security has been the subject of a grant of unlisted trading privileges to the exchange ceases to meet the requirements for listing set forth in Section 1.3. of this Article IV, the Exchange shall terminate such unlisted trading.

The Exchange's Statement of Basis and Purpose

The purpose of the proposed rule change is to revise the current By-Laws of the Exchange to reflect more accurately the procedure and criteria which will be followed by the Exchange in seeking unlisted trading privileges. The current Section 2 suggests that the granting of unlisted trading privileges is at the discretion of the Exchange whereas in fact this is the province of the Securities and Exchange Commission under Section 12(f) of the Securities Exchange Act of 1934.

The basis for the proposed rule change is Section 6(b)(5) and Section 12(f) of the Securities Exchange Act is that the principal purpose of the rule change is to clarify the procedures to be followed by the Exchange, and the criteria to be used by the Exchange, in determining whether to apply for the granting or termination of unlisted trading privileges on the Exchange. Therefore, the proposed rule change is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general, to protect investors and the public interest.

Comments Received From Members, Participants or Others on Proposed Rule Change

No comments on the proposed rule change were solicited or received by the Exchange.

Burden on Competition

The Exchange believes that the proposed rule change imposes no burden on competition.

On or before February 1, 1980, or within such longer period (i) as the Commission may designate up to ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 18, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

December 19, 1979.

[FR Doc. 79-39653 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

Horizon Energy Corp.; Order of Suspension of Trading

December 18, 1979.

It appearing to the Securities and Exchange Commission that there are questions concerning the accuracy of certain information regarding the testing and demonstration of a product which Horizon Energy Corporation claims to be a process to produce hydrogen and oxygen gas from the catalytic disassociation of water, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Horizon Energy Corporation.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in such securities on a national securities exchange or otherwise is suspended for the period from 9:30 a.m. (EST) on December 18, 1979 through midnight on December 27, 1979.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-39654 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16440; File No. SR-MSE-79-17]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 1, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms and Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated proposes to adopt new Rules 23 and 24 regarding Exchange Arbitrations, replacing existing Rules 23 and 24. The new rules incorporate the Uniform Code of Arbitration for resolving disputes between investors and member firms and also provide for arbitration of disputes between members.

Statement of Basis and Purpose

The procedures set forth in the proposed Uniform Arbitration Code were developed by the Securities Industry Conference on Arbitration, which is composed of representatives of the Midwest Stock Exchange and 9 other self-regulatory organizations, the Securities Industry Association and 3 representatives from the public. It is anticipated the Uniform Arbitration Code will eventually be adopted by each of these self-regulatory organizations and will provide for a uniform system of arbitration throughout the securities industry. The proposed uniform code will enable each of the self-regulatory organizations to provide investors with a simple and inexpensive procedure for the resolution of controversies with member firms. It will also provide, a consistent procedural format for utilization with arbitration proceedings for member disputes.

The proposed amendments to the Rules are consistent with Section 6(b)(5) of the Act in that the Uniform Arbitration Code will provide a more effective, efficient and economical dispute resolution system for the public and the memberships and thus will protect investors and the public interest.

Comments were received from the staff of the Securities and Exchange Commission by letter dated April 5, 1979 to a report by the Securities Industry Conference on Arbitration containing an earlier version of the Uniform Arbitration Code. Based on those comments the procedures were revised as presently submitted.

There will be no burden on competition.

On or before February 4, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceeding to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 21, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

December 19, 1979.

[FR Doc. 79-39655 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16432; File No. SR-MSRB-79-13]

Self-Regulatory Organizations; Proposed Rule Changes by Municipal Securities Rulemaking Board

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing proposed amendments to rule A-13 (hereinafter sometimes referred to as the "proposed rule changes"). The text of the proposed rule changes is as follows:[1]

Rule A-13. Underwriting Assessment for Municipal Securities Brokers and Municipal Securities Dealers

(a) *Assessment Rate.* In addition to the fees prescribed by [rule A-12] *other rules* of the Board, each municipal securities broker and municipal securities dealer shall pay a fee to the Board equal to .001% ($.01 per $1,000) of the [face amount] *par value* of all municipal securities which are purchased from an issuer [as part of a new issue] by or through such municipal securities broker or municipal securities broker or municipal securities dealer, whether acting as principal or agent, [and which have] *as part of a new issue which has an aggregate par value of $1,000,000 or more and which has* a final stated maturity of not less than two years from the date of the securities; provided, however, that if such municipal securities broker or municipal securities dealer is a member of a syndicate or similar account formed for the purchase of such securities, such fee shall be calculated on the basis of the participation of such municipal securities broker or municipal securities dealer in the syndicate or similar account. Such fee must be received at the office of the Board in Washington, D.C. not later than 30 calendar days following the date of settlement with the issuer. In the event a syndicate or similar account has been formed for the purchase of the securities, the fee shall be paid by the managing underwriter on behalf of each participant in the syndicate or similar account.

(b) *Form A-13.* Payment of the fee [specified] *required* in paragraph (a) hereof shall be accompanied by [two] *one completed* [copies] *copy* of Form A-13 prescribed by the Board.

(c) Form A-13 for Issues of Less Than $1,000,000. In addition to filing the copy or copies of the Form A-13 required by paragraph (b) hereof, each municipal securities broker and municipal securities dealer shall file with the Board one completed copy of Form A-13 for each issue of municipal securities which is purchased from an issuer by or through such municipal securities broker or municipal securities dealer, whether acting as principal or agent, as part of a new issue which has an aggregate par value of less than $1,000,000 and which has a final stated maturity of not less than two years from the date of the securities; provided, however, that if such municipal securities broker or municipal securities dealer is a member of a syndicate or similar account formed for the purchase of such securities, the Form A-13 with respect to such securities shall be filed by the managing underwriter on behalf of each participant in the syndicate or similar account. Each Form A-13 required to be filed under this paragraph must be received at the office of the Board in Washington, D.C. not later than 15 calendar days following the end of the calendar quarter in which the date of settlement with the issuer occurs.

[(c)](*d*) *Effective Date. Anything herein to the contrary notwithstanding, the fee prescribed in paragraph (a) shall be payable with respect to any new issue of municipal securities which a municipal securities broker or municipal securities dealer shall have contracted on or before December 31, 1979 to purchase from an issuer, including issues which have an aggregate par value of less than $1,000,000. The provisions of paragraph (c) shall apply only to new issues of municipal securities which a municipal securities broker or municipal securities dealer shall have contracted on or after January 1, 1980 to purchase from an issuer.* [The fee prescribed herein shall be payable with respect to municipal securities which the persons subject hereto (or, in the event any such person is acting as agent for another party with respect to the purchase of the securities, such other party) shall have contracted on or after November 1, 1977 to purchase from the issuer. The fee payable with respect to municipal securities which such persons shall have contracted to purchase from an issuer prior to November 1, 1977 shall be calculated at the rate of .002% ($.02 per $1000) of the face amount of such securities.]

[(d)](*e*) *Penalty.* In the event any person subject to this rule shall fail to pay the required fee, the Board may recommend to the Commission that the registration of such person with the Commission be suspended or revoked.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule changes is as follows:

Purpose of Proposed Rule Changes

Rule A-13 requires each municipal securities broker and municipal securities dealer to pay to the Board a fee based essentially on its underwriting activities. The purpose of the fee is to provide a continuing source of revenue to defray the costs and expenses of operating the Board.

Prior to the proposed rule changes, municipal securities brokers and municipal securities dealers were required to pay the fee on all new issues purchased by or through them which had final stated maturity of not less than two years from the date of the securities. The proposed rule changes modify rule A-13 to provide that the fee does not have to be paid with respect to new issues with an aggregate par value of less than $1,000,000. This change will result in significant administrative cost savings for the Board and the industry.

Under the rule prior to amendment, the Board had to reflect in its books as an account receivable the assessment fee due on each new issue with an aggregate par value of less than $1,000,000 and to make separate entries upon the receipt of payment of such fees. These accounting requirements imposed a significant administrative burden on the Board which far outweighed the value to the Board of the resulting fee payments. According to an independent accounting firm retained by the Board to review its financial systems, the elimination of the underwriting assessment fee on issues of less than $1,000,000 will reduce the "recording requirements * * * by 39 to 46 percent," while only reducing annual revenue to the Board by $20,000 at most. The accounting firm therefore recommended that the Board eliminate the assessment fee on such issues.

The change will also benefit the industry because municipal securities brokers and municipal securities dealers will not have to draw checks for relatively insignificant amounts. The administrative costs associated with drawing and processing assessment checks for such amounts is often considerably in excess of the fees paid. In this regard, the Board notes that such administrative costs tend to increase as

[1] *Italics* indicate new language; [brackets] indicate deletions.

a function of the size of the dealer involved. The requirement to pay the underwriting assessment fee on small issues has therefore proven burdensome to the industry and presented compliance problems.

Although the requirement to pay an assessment fee on issues of less than $1,000,000 has been eliminated, the proposed rule changes require that municipal securities brokers and municipal securities dealers file on a quarterly basis a Form A–13 for each such issue. The principal purpose for this requirement is to assure that the Board has continuing information regarding such issues, so that it may, among other things, reassess in the future its decision exempting them from the fee requirement.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule changes pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of municipal securities brokers and municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

Comments Received From Members, Participants or Others on Proposed Rule Changes

The Board has received numerous complaints from members of the industry regarding the difficulty and inconvenience of having to prepare and send checks in small amounts for payment of the underwriting assessment fee.

Burden on Competition

The Board recognizes that the proposed rule changes may have a greater impact on certain municipal securities brokers and municipal securities dealers than others, benefiting to a larger extent those which underwrite the greatest number of new issues with an aggregate par value of less than $1,000,000. The Board nonetheless believes that the proposed rule changes are justified in view of the significant administrative benefits which they will produce for the Board and the industry. Further, any advantage which may accrue to certain municipal securities brokers or municipal securities dealers will not be material since the proposed rule change saves them in fee costs a maximum of $10.00 per issue. The Board notes that all municipal securities brokers and municipal securities dealers will benefit to the extent that they underwrite issues with an aggregate par value of less than $1,000,000.

The foregoing rule changes have become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 21, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

December 18, 1979.

[FR Doc. 79-39656 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16438; File No. SR-OCC-79-8]

Self-Regulatory Organizations; Proposed Rule Change by the Options Clearing Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94–29, 16 (June 4, 1975), notice is hereby given that on December 12, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the deadline for filing exercise notices with OCC on regular trading days from 3:30 p.m. to 7:00 p.m. (Central Time), and would permit exercise notices to be revoked until 7:00 p.m. (Central Time) on the date of filing.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change would extend the deadline for filing exercise notices with OCC on regular trading days from 3:30 p.m. to 7:00 p.m. The rule change would also permit exercise notices to be revoked or modified until 7:00 p.m. on the date of filing.

The purpose of the proposed rule change is to reduce the incidence of errors in the filing of exercise notices by providing additional time in which to make exercise determinations and by permitting erroneous exercise notices to be corrected.

Background

Under (OCC's present rules, Clearing Members may exercise options at any time until 3:30 p.m. on regular trading days by filing a written exercise notice with OCC. Once filed, an exercise notice is irrevocable. Exercise notices filed with OCC during the day are assigned the same evening, beginning at approximately 11:00 p.m.

As the volume of options trading has increased, OCC has observed a corresponding increase in the number of errors made in connection with exercises. In a number of instances, brokers have failed, by mistake, to exercise a sizable long position in call options on the day before an ex-date, thereby losing a substantial dividend. Exercise errors can lead to other types of losses as well. OCC believes that the incidence of errors in the exercise process can be substantially reduced by the rule changes proposed herein.

Extension of Filing Deadline

Under OCC's present rule, a broker who executes transactions at the close of trading has only twenty minutes in which to determine his updated positions, make exercise decisions, and file exercise notices. For brokers whose positions fluctuate throughout the day, such as marketmakers and specialists, the 3:30 p.m. exercise deadline creates a significant potential for error.

Inasmuch as OCC's assignment processing does not commence until approximately 11:00 p.m., there is no significant operational reason for a 3:30

p.m. exercise deadline. Neither, as far as OCC can determine, is there any regulatory reason for such a deadline. OCC therefore proposes to extend the deadline for filing exercise notices on regular trading days to 7:00 p.m.

Correction of Erroneous Exercise Notices

On a number of occasions, Clearing Members have sought to withdraw exercise notices filed in error. Such errors have included specifying the wrong class of options, the wrong series within a class, or a greater number of option contracts than were intended to be exercised. In some cases (*e.g.*, where a Clearing Member mistakenly exercises out-of-the-money options), erroneous exercise notices can cause substantial losses. In other cases, while there may be no significant dollar loss, a broker or Clearing Member may find it necessary to purchase or sell the underlying security when he had not intended to do so, and to reconstruct the mistakenly exercised position.

Such errors could be substantially reduced if Clearing Members were permitted to withdraw or to correct exercise notices (and particularly if they were given until 7:00 p.m. in which to do so). Under OCC's present rules, however, exercise notices are expressly made irrevocable, and OCC has therefore been forced to deny all requests to revoke or modify exercise notices after filing.

The irrevocability provision in OCC Rule 801(a) dates from OCC's original rules. Its origins are not entirely clear, but it is believed to have been a by-product of OCC's former practice of assigning exercise notices in three separate "passes" on each trading day (which was dropped when OCC ceased to permit assignments to be "retendered"). Multiple assignment passes would have made it difficult, if not impossible, to process attempted withdrawals or modifications of exercise notices.

Whatever the original reasons may have been, OCC does not believe that exercise notices should continue to be treated as irrevocable. The processing of withdrawals or modifications would pose no significant operational problems for OCC; and as long as an exercise notice has not yet been assigned, its withdrawal would not affect the rights of any third party. OCC believes that there are significant benefits to be gained, in the form of a reduction of exercise errors, by permitting exercise notices to be revoked or corrected during the course of the day on which they are filed.

The proposed rule change would enhance OCC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible by reducing the incidence of errors in the filing of exercise notices.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

OCC does not believe that the proposed rule change would impose any burden on competition.

On or before February 4, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 21, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

December 19, 1979.

[FR Doc. 79-39657 Filed 12-27-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1749]

Alaska; Declaration of Disaster Loan Area

The area of Sheldon Point to Togiak, Coastal portion of the Unorganized Borough of the State of Alaska, constitutes a disaster area because of damage caused by sea storm, high winds and heavy seawaves which occurred on November 8–9, 1979. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on February 18, 1980, and for economic injury until the close of business on September 19, 1980, at: Small Business Administration, District Office, Suite 200, Anchorage Legal Center, 1016 West, Sixth Avenue, Anchorage, Alaska 99501, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 19, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-39635 Filed 12-27-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1736]

Idaho; Declaration of Disaster Loan Area

Boundary County and adjacent counties within the State of Idaho constitute a disaster area as a result of natural disaster as indicated:

County, Natural Disaster(s), and Date(s)

Boundary, drought, dry wells, May 5, 1979 to September 18, 1979.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 11, 1980, and for economic injury until the close of business on September 10, 1980, at: Small Business Adminstration, District Office, 1005 Main Street, Boise, Idaho 83702, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 14, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-39636 Filed 12-27-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1747]

Kansas; Declaration of Disaster Loan Area

The following counties and adjacent counties within the State of Kansas constitute a disaster area as a result of natural disaster as indicated:

County, Natural Disaster(s), and Date(s)

Harper, Heavy Rains and Flooding, October 30, 1979.

Harvey, Heavy Rains and Flooding, October 30, 1979 to November 5, 1979.

McPherson, Heavy Rains and Flooding, October 29, 1979 to October 30, 1979.
Barber, Heavy Rains, Hail, Winds, and Flooding, October 29, 1979 to October 30, 1979.
Sedgwick, Heavy Rains and Flooding, October 30, 1979 to October 31, 1979.
Reno, Heavy Rain, October 14, 1979.
Reno, Heavy Rains and Flooding, October 30, 1979.
Kingman, Heavy Rains and Flooding, October 29, 1979 to October 30, 1979.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 19, 1980, and for economic injury until close of business on September 19, 1980, at: Small Business Administration, District Office, Main Place Building, 110 East Waterman Street, Wichita, Kansas 67202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 19, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-39637 Filed 12-27-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circular; Public Debt Series—No. 31-79]

Treasury Notes of Series H-1983; Interest Rate

December 21, 1979.

The Secretary announced on December 20, 1979, that the interest rate on the notes designated Series H-1983, described in Department Circular—Public Debt Series—No. 31-79, dated December 13, 1979, will be 10½ percent. Interest on the notes will be payable at the rate of 10½ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-39593 Filed 12-27-79; 8:45 am]

BILLING CODE 4810-40-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protests's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. 218

MC 14552 (Sub-70TA), filed September 21, 1979. Applicant: McNICHOLAS TRANSPORATION CO., 555 W. Federal St., Youngstown, OH 44501. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and equipment, materials, and supplies used in the conduct of such business,* between Mahoning County, OH, on the one hand, and, on the other, points in Kenton County, KY for 180 days. Supporting shipper(s): Thorofare Markets, Inc., 650 N. Meridian, Youngstown, OH 44509. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 36422 (Sub-10TA), filed November 2, 1979. Applicant: MERCHANTS CONTRACTS DELIVERIES, INC. d.b.a., Warwick Delivery Service, 1212 East 19th St., Kansas City, MO 64108. Representative: John W. Iles 3123 Delaware Ave., Des Moines, IA 50313. Contract authority. *Such merchandise is as dealt in by retail department and mail order stores,* between Des Moines, IA, on the one hand, and, on the other, Omaha and Lincoln, NE. Supporting shipper(s): Montgomery Ward & Co., 140 South State St., Des Moines, IA., Send Protests to: Vernon Coble D/S, 600 Fed. Bldg., 911 Waltnut St., Kansas City, MO 64106.

MC 96992 (Sub-18TA), filed September 4, 1979. Applicant: HIGHWAY PIPELINE TRUCKING CO., P.O. Box 1517, Edinburg, TX 78539. Representative: Kenneth R. Hoffman, 801 Vaughn Building, Austin, TX 78701. *Gasoline,* in bulk, in tank vehicles from Arcadia, LA and the facilities of Atlas Processing Co., at or near Shreveport, LA, to Athens, Atlanta, Carthage, Clarksville, Gladewater, Henderson, Jacksonville, Longview, Lufkin, Marshall, Mineola, Mt. Pleasant, Nacogdoches, Palestine, Paris, San Augustine, Sulphur Springs, Texarkana and Tyler, TX for 180 days. Underlying ETA filed for 90 days. Supporting shipper: Exxon Company, U.S.A., P.O. Box 2180 Houston, TX 77001. Send protests to: Opal Jones, I.C.C. Rm. 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 103993 (Sub-1007TA), filed October 10, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). *Lumber, lumber products, wood products, millwork and particleboard,* from the facilities of Pluswood, Inc., at or near Oshkosh, WI to points in ME, VT, MA, NH, CT, RI, NY, NJ, NC, PA, MD, SC, VA, WV and the District of Columbia for 180 days. Supporting shipper: Pluswood Incorporated, P.O. Box 2248, Oshkosh, WI 54903. Send protests to: Beverly J. Williams, Transportation Assistant, ICC 429 Federal Bldg., 46 E. Ohio Street, Indianapolis, IN 46204.

MC 107012 (Sub-458TA), filed October 12, 1979. Applicant: NORTH AMERICAN VAN LINES, P.O. Box 988, Ft. Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). *Video game cartridge, cartoned* from the facilities of Atari at or near El Paso, TX to the facilities of

Atari Inc. at or near Sunnyvale, CA; Wheeling, IL; and Edison, NJ for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Atari, Inc., 390 Caribbean Drive, Sunnyvale, CA 94086. Send protest to: Beverly J. Williams, Trans. Assistant, ICC, 429 Federal Bldg., 46 E. Ohio St., Indianapolis, IN 46204.

MC 107012 (Sub-459TA), filed October 10, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Ft. Wayne, IN 46801. Representative: Stephen C. Clifford (same address as applicant). *Kitchen and vanity cabinets* from the facilities of Creative Cabinets at or near San Antonio, TX to points in AZ, CA, CO, ID, KS, LA, NM, NV, OK, SD, WA and WY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Creative Cabinets, 3215 North Pan American Expressway, San Antonio, TX 78220. Send protest to: Beverly J. Williams, Transportation Assistant, ICC, 429 Federal Bldg., 46 E. Ohio Street, Indianapolis, IN 46204.

MC 110012 (Sub-63TA), filed Sept. 20, 1979. Applicant: ROY WIDENER MOTOR LINES, INC., 707 N. Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, N.W., Washington, D.C. 20004. *New furniture,* from Chicago, IL to points in and east of MN, IA, MO, KS, OK, and TX, for 180 days. Supporting Shipper(s): Douglas Furniture Corp., 5555 W. 65th St., Chicago, IL 60638. Sent protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 110012 (Sub-64TA), filed Sept. 20, 1979. Applicant: ROY WIDENER MOTOR LINES, INC., 707 N. Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, N.W., Washington, D.C. 20004. *Nonalcoholic beverages (except in bulk in tank vehicles),* from the facilities of Shasta Beverages at or near Birmingham, AL and Charlotte, NC to points in TN, for 180 days. Supporting Shipper: Shasta Beverages Inc., 26901 Industrial Blvd., Hayward, CA 94545. Sent protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 114273 (Sub-678TA), filed October 2, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). *Four-wheel steer wagon truck bodies* from Milton, IA, to Decatur, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Mid-States Engineering & Manufacturing Co., P.O. Box 100, Milton, IA 52570. Sent protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 118202 (Sub-141TA), filed September 24, 1979. Applicant: SCHULTZ TRANSIT, INC., 323 Bridge Street, P.O. Box 406, Winona, MN 55987. Representative: Thomas J. Beener, One State Street Plaza, New York, NY 10004. *Fertilizing compounds (manufactured fertilizer),* NOI dry, in bags, barrels or boxes from Maumee, Holland and Toledo, OH to points in CT, IA, IL, IN, MA, ME, MN, NH, NY, PA and WI, for 180 days. Supporting Shipper: The Andersons, P.O. Box 119, Maumee, OH 43537. Sent protests to: Judith L. Olson, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 119632 (Sub-112TA), filed September 4, 1979. Applicant: REED LINES, INC., 634 Ralston Ave., Defiance, OH 43512. Representative: Wayne C. Pence (same as applicant). *Such commodities as are dealt in by grocery and food business houses (except perishable or in bulk)* from the facilities used by Hunt-Wesson Foods, Inc. in the Chicago, IL commercial zone to points in IN, KY, MI, OH for 180 days. Restricted in the service to points in the named states. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Hunt-Wesson Foods, Inc., P.O. Box 127, Rossford, OH 43460. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 123993 (Sub-65TA), filed October 18, 1979. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman (same address as applicant). *(1) Poultry and animal feed and mineral and vitamin mixtures for poultry and animal feeding except in bulk, (2) materials and supplies used in the manufacture, distribution and sales of commodities listed in (1) above,* between the plantsites of Allied Mills, Inc. at Fort Worth, TX and Memphis, TN on the one hand, and, on the other, points in LA, MS, AR, AL, and KY, for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting Shipper: Allied Mills, Inc., 5050 Poplar, Suite 1708, Memphis, TN 38147. Send protests to: Robert J. Kirspel, DS, ICC, T–9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 124692 (Sub-315TA), filed September 11, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59801. Representative: J. David Douglas (same address as applicant). *Fiberglass tanks* from Denver, CO to points in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Lifetime Fiberglass Tank Co., 5000 Packinghouse Road, Denver, CO 80216. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 124692 (Sub-316TA), filed September 4, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland P.O. Box 1680, Fargo, ND 58107. *Brick* from Denver, CO to points in MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Big Sky Masonry Supplies, Inc., 1100 Cherry Street, Helena, MT 59601. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 124692 (Sub-317TA), filed October 10, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59801. Representative: James B. Hovland, P.O. Box 1680, Fargo, ND 58107. *Wire cable,* from ports of entry at Portland, OR and Vancouver, WA to the warehouse facilities utilized by VSL Corporation in the Portland, OR commercial zone, restricted to the transportation of traffic having a prior movement by water, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: VSL Corporation, 1077 Dell Avenue, Campbell, CA 95008. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 124692 (Sub-318TA), filed October 11, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59801. Representative: James B. Hovland, P.O. Box 1680, Fargo, ND 58107. *Steel pipe* from Hammond, IN to Minneapolis, MN; Des Moines and Bettendorf, IA; St. Louis and Jennings, MO; Louisville, KY; Erie, PA; Omaha and Lincoln, NE; and points in IN, IL, WI, OH and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Tait Pipe Sales, Suite 202 Academy Center, 4000 Palos Verdes Drive North, Palos Verdes Peninsula, CA 90274. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 124692 (Sub-319TA), filed October 9, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, P.O. Box 1680, Fargo, ND 58107. *Concrete products* from Elk River, MN to the Antelope Valley Power Plant at or near Beulah, ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: North Dakota Concrete Products, Box 815, Bismarck,

ND 58501. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 124692 (Sub-320TA), filed November 1, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: William J. Gambucci, P.O. Box 1680, Fargo, ND 58107. Refractories and refractory products, and commodities used incidental to the installation thereof, from Fulton and Mexico, MO to points in AZ, CA, CO, ID, MN, MT, NM, NV, ND, OR, SD, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: A. P. Green Refractories Co., Green Blvd., Mexico, MO 62265. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 128102 (Sub-2TA), filed September 28, 1979. Applicant: STATE MOTOR FREIGHT, INC., 3905 E "A" Street, Pasco, WA 99301. Representative: Boyd Hartman, 10655 N.E. 4th Street, P.O. Box 3641, Bellevue, WA 98009. *Commercial fertilizer, liquid and dry, in bulk,* between points in Whitman County, WA and points in ID, north of the southern boundary of Idaho County, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Palouse Producers, Inc., P.O. Box 9, Pullman, WA 99163. The McGregor Company, Box 769, Colfax, WA 99111. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Building, Seattle, WA 98174.

MC 135953 (Sub-8TA), filed October 1, 1979. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Foodstuffs,* except in bulk, from the facilities of International Multifoods Corporation, at or near Melrose Park, IL, to points in OK & TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): International Multifoods Corporation, 2000 North George Street, Melrose Park, IL 60160. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138313 (Sub-66TA), filed October 1, 1979. Applicant: BUILDERS TRANSPORT, INC., 409–14th Street S.W., Great Falls, MT 59404. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. *Insulation board* from Nephi, UT to the facilities of Sun Wise, Inc. at or near Great Falls, MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Sun Wise, Inc., 609—10th Avenue South, Great Falls, MT 59401. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 140243 (Sub-10TA), filed October 1, 1979. Applicant: APPLE HOUSE, INC., 3726 Birney Ave, Scranton, PA 18505. Representative: Joseph F. Horay, 121 S. Main St., Taylor, PA 18518. *Masonry Supplies* from Bethany, CT to FL, GA, NC and SC, for 180 days. Supporting Shipper: Latacrete International, Inc., P.O. Box A.F., Woodbridge, CT 06525. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 140563 (Sub-48TA), filed October 11, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Gulbreth Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Lighting Fixtures and Parts and Accessories for Lighting Fixtures* from the facilities of Lithonia Lighting, a Division of National Service Industries, Inc. at or near Conyers, GA, Cochran, GA and Crawfordsville, IN to points in the United States in and east of ND, SD, CO, and NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Lithonia Lighting, Inc., a Division of National Service Industries, Inc., P.O. Box A, Conyers, GA 30207. Send protests to: Sara K. Davis T/A, ICC, 1252 W. Peachtree St., N.W. Room 300, Atlanta, GA 30309.

MC 140563 (Sub-49TA), filed October 2, 1979. Applicant: W.T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202 Atlanta, GA 30345. *Paper and paper products* from the facilities of Union Camp Corporation at or near Morristown, TN to points in IL, IN, KY, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. Send protests to: Sara K. Davis T/A, ICC, 1252 W. Peachtree St., NW Room 300, Atlanta, GA 30309.

MC 141443 (Sub-48TA), filed October 15, 1979. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: Wilburn L. Williamson, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Such commodities as are dealt in or used by manufacturers, distributors or dealers of waterbeds.* From Colorado Springs, CO to Oklahoma City and Tulsa, OK, Albuquerque, NM, and Austin, TX restricted to the transportation of traffic originating at or destined to the facilities of Waterbed Palace for 180 days. Supporting Shipper: Waterbed Palace, Inc., 3950 Palmer Park Blvd., Colorado Springs CO, 80909. Send protests to: Connie Stanley, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 144303 (Sub-13TA), (filed November 9, 1979. Applicant: YOUNGBLOOD TRUCK LINES, INC., US Highway 25S, Fletcher, NC 28732. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave, NW, Washington, DC 20036. *Contract carrier*-Irregular routes; *Paints, stains and varnishes, NOI, caulking compound, with related display and advertising materials, and materials, equipment and supplies used in the manufacture of paints, stains and varnishes and caulking compound (except commodities in bulk)* between the plant, manufacturing, and warehuse facilties of United Coatings, Inc. located at Charlotte, NC; Chicago, IL; Indianapolis, IN and Memphis, TN, on the one hand, and on the other, points in and East of MN, IA, MO, AR, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: United Coatings, Inc., 3050 N. Rockwell, Chicago, Il 60618. Send protests to: Sheila Reece, T/A, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 144622 (Sub-116TA), filed November 6, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. (I) *Food, foodstuffs and food ingredients* (except in bulk), *material supplies* used in the manufacture, distribution, and sales of products in (I), between AR, AL, CT, DE, WA, DC, FL, GA, KY, MD, MA, MS, ME, NJ, NY, NC, OH, PA, RI, SC, TN, VA, VT, and WV, restricted to shipments originating at, or destined to the facilities of, or used by, Morton Frozen Foods, Division of Continental Baking Company, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper: Morton Frozen Foods Division, ITT Continental Baking Co., Inc., P.O. Box 7547, Charlottsville, VA. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 144832 (Sub-1TA), filed September 21, 1979. Applicant: JOE C. SIKES d.b.a. GLENN-LEE TRUCKING CO., Hwy 21 S (P.O. Box 281), Springfield, GA 31329. Representative: Michael Hines, Walstrom Road, Savannah, GA 31404. *Gypsum and gypsum products* from the plantsite of the Flintkote Company, Chatham County, GA to all points in AL, FL, GA, SC, NC, and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: The Flintkote Company, P.O. Box 800, Irving TX 75221. Send protests to: Sara K.

Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 145152 (Sub-129TA), filed November 7, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. *Glassware, glass containers, caps, covers, stoppers and tops and materials* used in the manufacture of such commodities, from the facilities of Libbey Glass, Division of Owens-Illinois, at or near Shreveport, LA, to points in the United States (except AK, HI and LA), for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper: Libbey Glass, Division of Owens-Illinois, P.O. Box 919, Toledo, OH 43693. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 145152 (Sub-130TA), filed November 8, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. *Frozen and dry canned goods* from Laredo, TX to points in the United States (except AK and HI) for 180 days. Supporting shipper: United States Customs Brokers, 1400 Santa Rita Ave., Laredo, TX 78040. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 145513 (Sub-9TA), filed October 15, 1979. Applicant: SERVICE TRANSPORTATION, INC., P.O. Box 732, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Sugar molasses by-products, in bulk,* from San Jose, CA and points in its commerical zone, to the facilities of Loomix, Inc. at or near Nyssa, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Loomix, Inc., P.O. Box 2474, Nyssa, OR 97913. Send protest to: Barney L. Hardin, D/S ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 145582 (Sub-4TA), filed August 29, 1979. Applicant: DENMARK TRUCKING, INC., P.O. Box 373, Greenville, MS 38701. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701. *Contract carrier;* irregular routes: *Malt beverages, advertising and display material and containers* (except commodities in bulk) between the facilities of Anheuser Busch located at or near Columbus, Ohio and Greenville, MS, for the account of Riverside Distributor, Inc., Greenville, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Riverside Distributor, Inc., 730 Main Street, Greenville, MS 38701. Send protest to: Alan C. Tarrant, D/S, ICC, Federal Building, Suite 1441, 100 W. Capitol St., Jackson, MS 39201.

MC 146402 (Sub-11TA), filed September 13, 1979. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske, P.O. Box 968, Jackson TN 38301. *Toilet preparations (except commodities in bulk in tank vehicles),* from the facilities of Pro-Line Corp, at Carson, CA to Birmingham, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pro-Line Corp, 1059 Bedmar St., Carson, CA 0–746. Send protest to: Floyd A. Johnson, Suite 2006—100 N. Main St., Memphis, TN 38103.

MC 146452 (Sub-2TA), filed September 5, 1979. Applicant: ALBERTSON'S, INC., P.O. Box 20, Boise, ID 83726. Representative: William H. Grady, 1100 Norton Bldg., Seattle, WA 98104. *Such merchandise, articles or commodities as are dealt in by wholesale, retail and chain grocery store establishments (except commodities in bulk),* from points in WA, OR, UT and ID to Fremont, CA, under a continuing contract or contracts with Kockos Bros., Inc. of Oklahoma City, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kochos Bros., Inc. d.b.a. Fleming Foods Co., 5900 Stewart, Fremont, CA. Send protest to: Barney L. Hardin, D/S, ICC Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 146522 (Sub-9TA), filed September 10, 1979. Applicant: ADRIAN CARRIERS, INC., 1826 Rockingham Rd., Davenport, IA 52808. Representative: James M. Hodge, 1980 Financial Ctr., Des Moines, IA 50309. Contract carrier—irregular routes, *malt beverages* from the facilities of the Miller Brewing Co. at Milwaukee, WI, and Fulton, NY, to Davenport, IA, under continuing contract(s) with Wolfe Beverage Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wolfe Beverage Co., 1028 South Dittmer, Davenport, IA 52802. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146623 (Sub-4TA), filed October 11, 1979. Applicant: STAMEY ENTERPRISES, INC., 7350 102nd Place, South, Boynton Beach, FL 33435. Representative: Richard B. Austin, Suite 214, 5255 N.W. 87th Ave., Miami, FL 33178. *Foodstuffs, prepared foods and drink mixers* between New York, NY, Chicago, IL, Newark, Ridgefield and Pennsauken, NJ, Berwick, Montville and York, PA, Cleveland, OH, Boston, MA, Oconomowac, WI, Birmingham, AL, and Atlanta, GA, on the one hand, and, on the other, Dade County, FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hamersmith, Inc., 3200 N.W. 125th St., Miami, FL 33167. Send protests to: Donna M. Jones, T/A, ICC-BOp, Monterey Bldg., Suite 101, 8410 N.W. 53rd Ter., Miami, FL 33166.

MC 146753 (Sub-3TA), filed October 17, 1979. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 46240. Representative: Donald W. Smith, 9000 Keystone Crossing, Suite 945, Indianapolis, IN 46240. *Cosmetics, jewelry products, and materials used in their distribution* from Morton Grove and Glenview, IL to Monrovia and Pasadena, CA; Chamblee, GA, and Kansas City, MO for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Avon Products, Inc., 6901 Golf Road, Morton Grove, IL 60053. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 429 Federal Bldg., 46 E. Ohio Street, Indianapolis, IN 46204.

MC 146782 (Sub-21TA), filed September 10, 1979. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 1st Avenue, South, Nashville, TN 37201. Representative: James Rex Raines, 300 1st Avenue, South, Nashville, TN 37201. *Paint and construction adhesives and materials, supplies and equipment used in the manufacturing of paint and construction adhesives (except in bulk),* between the facilities of Warren Paint and Color Company at Nashivlle, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI). For 180 days. Restriction: Restricted to traffic originating at or destined to Warren Paint and Color Company at or near Nashville, TN. Supporting shipper(s): Warren Paint & Color Co., 700 Wedgewood Avenue, Nashville, TN 37203. Send protests to: Glenda Kuss, TA, ICC, A–422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 147192 (Sub-1TA), filed September 4, 1979. Applicant: TESORO TANK LINES COMPANY, 8700 Tesoro Drive, San Antonio, TX 78286. Representative: Thomas F. Sedberry, 801 Vaughn Bldg., Austin, TX 78701. Contract, Irregular, *Crude petroleum and gas well condensate,* in bulk, in tank vehicles, between points in LA, on the one hand, and, on the other, points in TX, on and east of Interstate Highway 35, under a continuing contract with Tesoro Crude Oil Company for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Tesoro Crude Oil Company, 8700 Tesoro Drive, San Antonio, TX 78286. Send protests to: Opal Jones,

I.C.C., Rm 9A27 Federal Bldg. 819 Taylor St., Fort Worth, TX 76102.

MC 147212 (Sub-2 TA), filed August 13, 1979. Applicant: YASTE TRANSPORTATION CO., INC., 2619 Cherry Street, Hoquiam, WA 98550. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. *Contract carrier:* Irregular routes: *Wood pulp and empty ocean containers,* between Hoquiam, WA and Seattle, WA, restricted to the transportation of traffic having a prior or subsequent movement by water and to a transportation service to be performed for the account of Kerr Steamship Co., Inc. of Seattle, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kerr Steamship Co., Inc., 3801 Seattle First National Bank Bldg., Seattle, WA 98154. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Building, Seattle, WA 98174.

MC 147343 (Sub-5TA), filed October 15, 1979. Applicant: TREADWAY CARRIERS, INC., P.O. Box 364, Westfield, IN 46074. Representative: Orville G. Lynch (same address as applicant). *Loudspeakers, and material used in the manufacture of loudspeakers* from Tiffin, OH to Los Angeles, CA; Miami, FL; Atlanta, GA; Chicago, IL; Santa Claus; IN, Baltimore, MD; Boston, Newburyport, and North Adams, MA; Minneapolis, MN; St. Louis, MO; Albany and New York, NY; Shawnee, OK; and Dallas and Houston, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tiffin Enterprise, 458 Second Avenue, Tiffin OH 44883. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 429 Federal Bldg., 46 E. Ohio Street, Indianapolis, IN 46204.

MC 147402 (Sub-4TA), filed September 14, 1979. Applicant: WACO DRIVERS SERVICE, INC., 138 Atando Ave., Charlotte, NC 28206. Representative: John P. Tucker, Jr., 2200 Century Parkway, Suite 202, Atlanta, GA 30345. *Contract* carrier-Irregular routes; *Scrap paper and waste paper* between points in GA, on the one hand, and, on the other, points in NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Atlanta Intercel-A, Division of International, Cellulose, Inc., 1240 Stewart Ave., Atlanta, GA, 30310. Send protests to: Sheila Reece, T/A, 800 Briar Creek Rd-Rm CC516, Charlotte, NC 28205.

MC 148363 (Sub-1TA), filed October 2, 1979. Applicant: WILLIAM H. BECK, INC., Box 51, Fulton, NY 13069. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Contract carrier-irregular routes. *Liquid brewers condensed solubles, in bulk,* from the facilities of Anheuser Busch, Inc. at Merrimack, NH to facilities of Anheuser Busch, Inc. at East Brunswick, NJ under a continuing contracts with Anheuser Busch, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anheuser Busch, Inc., 721 Pestalozzi St., St. Louis, MO 63118. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 West Huron Street, Buffalo, NY 14202.

MC 148423 (Sub-1TA), filed October 29, 1979. Applicant: AVANT TRUCKING COMPANY, INC., P.O. Box 216, Gray, GA 31032. Representative: R. Napier Murphy, 700 Home Federal Bldg., Macon, GA 31201. *Industrial waste products, in bulk* from the plantsite of General Motors Corporation at or near Atlanta, GA to approved EPA dumping points in AL and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Motors Corporation, McDonough Boulevard and Sawtell Road, Atlanta, GA 30315. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 148423 (Sub-2TA), filed October 29, 1979. Applicant: AVANT TRUCKING CO., INC., P.O. Box 216, Gray, GA 31032. Representative: R. Napier Murphy, 700 Home Federal Building, Macon, GA 31201. *Solar salt, in bag and bulk* from Glynn County, GA to points in SC and NC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Marine Port Terminals, Inc., P.O. Box 1039, Brunswick, GA. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 148483 (Sub-1TA), filed October 19, 1979. Applicant: INTERSTATE MOVING AND STORAGE CO., P.O. Box 334, Cheyenne, WY 82001. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, DC 20036. *Household Goods,* as defined by the Commission, between points in WY and Banne, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheriden and Sioux Counties, NE. Supporting shipper(s): HC&D Forwarders International, Inc., Robert E. Lederer, Operations Manager, P.O. Box 4475—Burlingame, CA 94010. Allied Freight Forwarding, Inc., Mario Rizzo, Vice Pres., P.O. Box 4403, Chicago, IL 60680. AFI Worldwide Forwarders, Patrick M. Cronin, Vice Pres. Operations, 335 Valencia St., San Francisco, CA 94103. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Rm 105 Federal Bldg & Crt House, 111 South Wolcott, Casper, WY 82601.

MC 148622 (Sub-TA), filed November 1, 1979. Applicant: EXPRESS SERVICE, INC., P.O. Box 263, Antioch, TN 37013. Representative: Bryan E. Hubbard (same address as applicant). (1) *Parts, supplies, accessories & associated items for: automobile, trucks, farm equipment, earth moving equipment & industrial machinery, (2) Printed Matter & associated items, (3) General Commodities which have a prior or subsequent movement by air,* between Davidson County, TN, on the one hand, and, on the other, points in Simpson, Warren, Barren and Allen Counties, KY; Robertson, Sumner, Macon, Trousdale, Wilson, Rutherford, Bedford, Lincoln, Marshall, Giles, Maury & Williamson Counties, TN, for 180 days. Note: Applicant intends to interline with other carriers at Nashville, TN. Supporting Shipper(s): "There are 26 supporting shippers. Their statements may be examined at the office listed below and Headquarters." Sent protests to: Glenda Kuss, TA, ICC, A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 148623 (Sub-TA), filed October 16, 1979. Applicant: RON BUNGER TRUCKING AND FERTILIZER, LTD., Box 156, Davis Junction, IL 61020. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Fertilizer materials,* from the facilities of N-Ren Corporation at East Dubuque, IL; from the facilities of W. R. Grace & Co. at Henry, IL, and from the facilities of Illinois-Nitrogen at Marseilles, IL to points in IA, MN, and WI for 180 days. Supporting Shipper(s): N-Ren Corporation, P.O. Drawer D, East Dubuque, IL 61025, W. R. Grace & Co., P.O. Box 1701, Peoria, IL 61656. Send protests to: Annie Booker, TA, IC, 219 S. Dearborn, Room 1386, Chicago, IL 60604.

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MC 11722 (Sub-70TA), filed Nov. 6, 1979. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 N.E. Weidler St., Portland, OR 97232. *Liquid sweetener, in bulk in tank vehicles* from Harrah, WA to Missoula, Butte, and Great Falls, MT and Lewiston, ID for 180 days. A corresponding ETA has been filed and a permanent will be filed in the immediate future. Supporting shipper(s): Liquid Sugar, Inc., 1299 N.E. Front St., Salem, OR 97301. Send protests to: D. Merine Galbraith, T/A, ICC, 14 Pioneer Courthouse, Portland, OR 97204.

MC 15242 (Sub-11TA), filed November 5, 1979. Applicant: CAUTHEN GIN & BAG CO., Rt. 4, Box 550, Monroe, NC

28110. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. *Office furniture* from the facilities of Vanguard Business Furniture, Inc. located at or near Brooklyn, NY to points in and east of LA, AR, MO, IA and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vanguard Business Furniture, Inc., 10 Java St., Brooklyn, NY 11222. Send protests to: Sheila Reece, T/A, 800 Briar Creek Rd—Rm CC516, Charlotte, NC 28205.

MC 20992 (Sub-57TA), filed November 5, 1979. Applicant: DOTSETH TRUCK LINE, INC., Knapp, WI 54749. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Iron and steel articles* from the facilities of Nucor Corporation at or near Norfolk, NE to points in IL, IN, MN, ND, SD, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nucor Corp., P.O. Box 59, Norfolk, NE 68701. Send protests to: Judith Olson, TA, ICC, 414 Fed. Bldg., 110 S. 4th St., Minneapolis, MN 55401.

MC 41432 (Sub-165TA), filed November 2, 1979. Applicant: EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway, P.O. Box 10125, Dallas, TX 75207. Representative: Wayland Little (same address as applicant). Common carrier, regular routes; *General commodities, except household goods, as defined by the Commission, commodities of unusual value, commodities requiring special equipment, livestock, and petroleum products, in bulk, in tank vehicles* serving the facilities of Payson Display Fixture, Division of AG Industries, Inc., located at or near Payson, Utah, as an off-route point in connection with carrier's authorized regular route operation, for 180 days. Underlying ETA for 90 days has been filed. NOTE: Applicant intends to *tack* its authority; it also intends to interline with other carriers. Supporting shipper(s): Payson Display Fixture, Division of AG Industries, Inc., 4777 West 10400 South, Payson, UT 84651. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St., Ft. Worth, TX 76102.

MC 58902 (Sub-18TA) filed October 1, 1979. Applicant: MANLEY TRANSFER COMPANY, INC., P.O. Box 1575 SSS, Springfield, MO 65806. Representative: A. J. Whisler (same as applicant). *General Commodities, except those of unusual value, Classes A and B explosives, HHG as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading,* serving points in Woodson, Allen, Wilson, Neosho, Montgomery, Lebette and Cherokee Counties, KS as off-route points in connection with carrier otherwise regular route authority. Applicant intend to tack this authority with its other authority. Supporting Shipper(s): Application is supported by 12 shippers, whose names are on file at the Kansas City and Washington offices. Send protests to: Vernon Coble D/S, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 71772 (Sub-3TA), filed November 5, 1979. Applicant: MT. PLEASANT TRANSFER, INC., P.O. Box 267, Columbia Highway, Mt. Pleasant, TN 38474. Representative: Stephen L. Edwards, 806 Nashville, Bank & Trust Bldg., Nashville, TN 37201. *Common carrier:* regular routes: *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 Mt. Pleasant, TN and Chattanooga, TN: (1) From Mt. Pleasant, TN over U.S. Hwy No. 43, to the intersection of U.S. Hwy 43 with TN State Hwy No. 50, then over TN State Hwy No. 50 to the intersection of TN State Hwy 50 with U.S. Hwy No. 431, then over U.S. Hwy 431 to its intersection with U.S. Hwy No. 64, then over Hwy No. 64 to its intersection with U.S. Hwy Interstate 24, then over U.S. Hwy Interstate 24 to its intersection with TN State Hwy No. 28, then over TN State Hwy No. 28, to its intersection with U.S. Hwys No. 41, 64, and 72, then over U.S. Hwys No. 41, 64, and 72 to their intersection with U.S. Hwy Interstate 24, then over U.S. Hwy Interstate 24 to Chattanooga, and return over the same routes, serving no intermediate points, but serving all points in Maury County, TN as off-route points. Supporting shipper(s): "There are (22) shippers. Their statements may be examined at the office listed below and Headquarters." Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

Note.—Applicant seeks authority to tack the authority sought herein with existing authority held by it and to interline with other carriers at Chattanooga and Nashville, TN for 180 days.

MC 107162 (Sub-59TA), filed November 1, 1979. Applicant: NOBLE GRAHAM TRANSPORT, INC., Rural Route No. 1, Brimley, MI 53701. Representative: Michael S. Varda, 121 South Pinckney, Madison, WI 53701. *Iron and steel articles and non-ferrous metals,* from points in the commercial zones of Chicago, IL and Minneapolis-St. Paul, MN to Kincheloe, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kinship, Inc., Building 400, Kincheloe, MI 49788. Send protests to: C.R. Flemming, DS, ICC, 300 E. Michigan Avenue, Lansing, MI 48933.

MC 107912 (Sub-32TA), filed October 1, 1979. Applicant: REBEL MOTOR FREIGHT, INC., 3934 Homewood Dr., Memphis, TN 38118. Representative: James N. Clay, 2700 Sterick Bldg., Memphis, TN 38103. *General commodities, except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment,* between Baton Rouge and Reserve, LA serving all intermediate points and as off-route points those in Baton Rouge, East Baton Rouge, Iberville, Ascension, St. James and St. John the Baptist Parishes: from Baton Rouge over U.S. Hwy. 61 to Reserve and return over the same route for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to tack authority to existing authority under MC–107912 and subs thereunder at the common joinder point of Baton Rouge, LA. Applicant intends to interline with existing carriers at Baton Rouge, LA, Jackson, MS and Memphis, TN. Supporting shipper(s): Applicant has 15 supporting shippers. Send protests to: Floyd A. Johnson, Suite 2006—100 N. Main St., Memphis, TN 38103.

MC 114552 (Sub-238TA), filed November 1, 1979. Applicant: SENN TRUCKING COMPANY, P.O. Box 220, Newberry, SC 29108. Representative: William F. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. *Metal articles,* between points in Knox County, TN, on the one hand, and, on the other, points in KY, VA, AL, TN, GA, LA, OH, PA, IL, AR, MS, TX, FL, SC, NC and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Glazer Steel & Aluminum, Inc., 2501 Ailor Avenue, Knoxville, TN. Send protests to: E. E. Strotheid, D/S, ICC, 866 Strom Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201.

MC 128273 (Sub-375TA), filed October 3, 1979. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same as above). *Such commodities as are used or dealt in by paper converters* (except commodities in bulk, in tank vehicles) from (a) Sheridan, AR to points in CA, KY, OR, PA, VA & WA and (b) from points in KY to Sheridan, AR. Restricted to traffic

originating at or destined to the facilities of St. Regis Paper Company at Sheridan, AR.; for 180 days, common, irregular; Supporting shipper: St. Regis Paper Company, First City East Bldg., 1111 Fannin St., Houston, TX 77002. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 138322 (Sub-17TA), filed October 12, 1979. Applicant: BHY TRUCKING, INC., 9231 Whitmore, El Monte, CA 91733. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Plywood, composition board and lumber products,* from Carson, CA and ports in the United States Galvestion, TX, New Orleans, LA, Charleston, NC, and Baltimore, MD to points in the United States (except AK and HI), restricted to shipments for the account of Pacific Wood Products, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Pacific Wood Products, 22673 S. Wilmington Ave., Carson, CA 90745. Send protests to: Irene Carlos, T/A, I.C.C., 300 N. Los Angeles St., Rm. 1321, Los Angeles, CA 90012.

MC 138732 (Sub-34TA), filed October 9, 1979. Applicant: OSTERKAMP TRUCKING, INC., 764 North Cypress Street, Post Office Box 5546, Orange, California 92267. Representative: Michael R. Eggleton, 2500 Old Crow Canyon Road, Suite 325, San Roman, California 94583. *Steel strapping,* from the facilities of Stanley Steel Strapping Systems, at Pittsburg, California, to points in Arizona and Albuquerque, New Mexico, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Stanley Steel Strapping Systems, Plant Manager, 855 North Parkside Drive, Pittsburg, California 94565. Send protests to: Irene Carlos, TA, ICC, 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 138882 (Sub-326TA), filed October 1, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). *Stoneware, china and steel flatware,* between points in the United States, for 180 days. Supporting shipper(s): Wallace International, Inc., P.O. Box 22226, Birmingham, AL 35203. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 139482 (Sub-163TA), filed November 9, 1979. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. *General commodities (except commodities in bulk)* from Miles, Bensenville and Elk Grove Village, IL to Shreveport, LA, restricted to the transportation of traffic destined to the facilities of W. W. Grainger, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): W. W. Grainer, Inc., 5959 W. Howard St., Chicago, IL 60648. Send protests to: Judith L. Olson, TA, ICC, 414 Fed. Bldg., 110 S. 4th St., Minneapolis, MN 55401.

MC 142672 (Sub-93TA), filed September 24, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Such commodities as are dealt in or used by discount, variety and grocery stores* (except in bulk), from points in AL, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV and DC, to Harrison, AR, for 180 days. Supporting shipper(s): Mass Merchandisers, Inc., P.O. Box 790, Harrison, AR 72601. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 142672 (Sub-94TA), filed November 2, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. *(1) Bx broiler, cookers, roasters (outdoor BBQ type, gas-fired, cast aluminum; and, (2) materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above* between the facilities of Arkla Industries, Inc., at or near paragould, AR, on the one hand, and, on the other, points in the United States (except AK and HI) for 180 days. Supporting shipper(s): Arkla Industries, Inc., P.O. Box 1309, Paragould, AR 72450. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201..

MC 142672 (Sub-95TA), filed November 1, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. *Sets, radio and TV and related articles; phono operated and sound mechanisms; stands and tables, KD; loudspeakers, dynamic console type; and games and tapes having a density of more than six pounds but less than twelve pounds* from Greenville and Jefferson City, TN to points in AR, OK and TX for 180 days. Supporting shipper(s): Magnavox Consumer Electronics, P.O. Box 479, Greenville, TN. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 142672 (Sub-96TA), filed October 2, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Wood pallets, wood boxes, softwood and hardwood products used for material handling,* from the facilities of Mulberry Lumber Company, at or near Mulberry, AR to points in AZ, CA, NV, OH, PA and UT, for 180 days. Supporting shipper(s): Mulberry Lumber Co., South Main at M.P.R.R., Mulberry, AR 72947. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 143812 (Sub-17TA), filed October 19, 1979. Applicant: MARTIN E. VAN DIEST, d.b.a., M. VAN DIEST COMPANY, 8087 Victoria Avenue, Riverside, CA 92504. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Glycerine, in bulk,* between Burbank, CA, on the one hand, and, on the other, Cincinnati, OH and Hammond, IN, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Andrew Jergens Co., 99 W. Verdugo Avenue, Burbank, CA 91502. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 144452 (Sub-18TA), filed November 5, 1979. Applicant: ARLEN LINDQUIST, d.b.a., ARLEN E. LINDQUIST TRUCKING, 3242 Old Highway 8, Minneapolis, MN 55418. Representative: William J. Gambucci, 414 Gate City Bldg., P.O. Box 1680, Fargo, ND 58107. (1) *Petroleum and petroleum products,* in containers, and (2) *advertising matter and commodities used or distributed by wholesale or retail supplier, marketers, or distributors* of petroleum products when moving in mixed loads with petroleum products (except in bulk) from Ponca City, OK, to points in MN, ND and SD, for 180 days. Supporting shipper(s): Conoco Inc., P.O. Box 2197, Houston, TX 77001. Send protests to: Judith Olson, TA, ICC, 414 Fed. Bldg., 110 S. 4th St., Minneapolis, MN 55401.

MC 144572 (Sub-31TA), filed November 1, 1979. Applicant: MONFORT TRANSPORTATION CO., P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202. *Automobile parts and accessories, and advertising and packaging materials* from the facilities of Chrysler Corp., Service, and Parts Division, located at Center Line, Marysville, and Warren, MI, for 180 days. Authority sought for underlying 90-day ETA. Supporting

shipper(s): Chrysler Corporation, Service, & Parts Division, 26311 Lawrence Avenue, Center Line, Michigan 48105. Send protests to: District Supervisor R. L. Buchanan, 492 U.S. Customs House, 721 19th Street, Denver, Colorado 80202.

MC 144622 (Sub-117TA), filed November 1, 1979. Applicant: GLENN BROS, TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip H. Glenn (same address as above). *Chemical and chemical products* from Cleveland, Ohio to points in California, Iowa, Illinois, Oregon, Texas and Wisconsin, for 180 days. Supporting shipper(s): Foseco, Inc., 20200 Sheldon Rd., Cleveland, OH 44181. Send protests to: William H. Land DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 145072 (Sub-30TA), filed November 5, 1979. Applicant: M. S. CARRIERS, INC., 1797 Florida Street, Memphis, TN 38109. Representative: A. Doyle Cloud, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. *Televisions, microwave ovens, stereos, electronic equipment (except in bulk and materials, equipment and supplies utilized in the manufacture of the previously named items,* between Memphis, TN on the one hand, and in and east of the states of TX, OK, KA, IA, and MN, restricted to traffic originating at or destined to the facilities of Sharp Manufacturing Co. of America, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Sharp Manufacturing Company of America, 4038 Raines Rd. East, Memphis, TN 38118. Send protests to: Floyd A. Johnson, Suite 2006—100 N. Main St., Memphis, TN 38103.

MC 145513 (Sub-10TA), filed November 7, 1979. Applicant: SERVICE TRANSPORTATION, INC., P.O. Box 732, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Anhydrous Ethanol (200 proof)* from Bellingham, WA and points in its commercial zone to Boise, ID and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Sun Ray Drive-In Dairies, Inc., 6127 Franklin Road, Boise, ID 83705. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 145772 (Sub-10TA), filed September 27, 1979. Applicant: LANG CARTAGE CORP., P.O. Box 1465, Waukesha, WI 53187. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203. *Chemical products* except in bulk, from the facilities of Athea Laboratories, Inc., at Milwaukee, WI to points in MN, the Upper Peninsula of MI and in Boone, Cook, DeKalb, DuPage, Kane, Lake, McHenry, Ogle, Stephenson and Winnebago Counties, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Athea Laboratories, Inc., 630 East Keefe Avenue, Milwaukee, WI 53212. Send protests to: John E. Ryden, DS, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146182 (Sub-3TA), filed November 1, 1979. Applicant: GARY W. GRAY, P.O. Box 48, Delaware, NJ 07823. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Contract carrier, irregular routes, *gasoline and distillates,* in bulk, from Newark and Changewater, NJ to points in Carbon, Schuylkill, Northumberland, Wayne, Montgomery, Lackawanna, Lehigh, Luzerne, Lycoming, Northampton and Monroe Counties, PA and Orange and Rockland Counties, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Getty Refining & Marketing Company, P.O. Box 5038, Cherry Hill, NJ 08034. Send protests to: Joel Morrows, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 146293 (Sub-37TA), filed October 5, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial Park Circle, Lawrenceville, GA 30245. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Paper and paper products, and materials, equipment and supplies used in the manufacture or distribution of paper and paper products,* from Green Bay, Fond du Lac, Marinette and Oconto Falls, WI to points in the states of IL, IN, NY, OH and PA, for 180 days. Supporting shipper(s): Scott Paper Company, Scott Plaza, Philadelphia, PA 19113. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Room 300, Atlanta, GA 30309.

MC 146402 (Sub-12TA), filed November 1, 1979. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles, W. Teske (same as applicant). *Copper and copper products* (except commodities in bulk in tank or hopper vehicles), from the facilities of Cerro Copper Products Company at Sauget, IL to points in CA, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cerro Copper Products Company, P.O. Box 681, East St. Louis, IL 62202. Send protests to: Floyd A. Johnson, Suite 2006, 100 N. Main St., Memphis, TN 38103.

MC 147062 (Sub-6TA), filed November 2, 1979. Applicant: EXPRESS TRANSPORTATION COMPANY, P.O. Box 789, Chattanooga, TN 37401. Representative: Ralph B. Matthews, P.O. Box 56387, Atlanta, GA 30343. *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 AL, GA and TN, on the one hand, and, on the other, points in IL, IN, MI, MO and WI, for 180 days. RESTRICTION: Restricted to transportation of traffic moving on bills of lading of shippers association operating pursuant to Section 10562(3) of the Interstate Commerce Act and further restricted against the use of substituted rail for motor service. Supporting shipper(s): Action Shippers Association, Inc., P.O. Box 224, Chattanooga, TN 37401. Send protests to: Glenda Kuss, TA, ICC, A–422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 147652 (Sub-1TA), filed October 2, 1979. Applicant: J & V TRUCKING COMPANY, INC., 948 Alton Parkway, Alton Industrial Park, Birmingham, AL 35203. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. Contract, Irregular: *Fabricated steel pipe and materials and supplies used in the manufacture, installation or sale of such commodities.* Between the facilities of Emergency Fire Protection, Inc. of AL, at or near Birmingham, AL; on the one hand, and on the other, all points in the states of AL, GA, FL, SC, NC, VA, KY, TN, AR, MO, MS, LA, TX, NM, AZ, and CA, for 180 days. Supporting shipper(s): Emergency Fire Protection Inc. of Alabama, Alton Industrial Park, Birmingham, AL, 35203. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 147712 (Sub-8TA), filed November 2, 1979. Applicant: MID-WESTERN TRANSPORT, INC., 10506 South Shoemaker Avenue, Santa Fe Springs, CA 90670. Representative: Joseph Fazio (same address as above). General commodities (with issued exception) restricted to the transportation of commodities normally transported on flat-bed equipment, from Los Angeles County, CA, to points in AL, CO, FL, GA, IL, IN , LA, MA, MN, MO, OH, PA, and TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Interstate Express, Inc., Manager—Los Angeles Operations, 8696 S. Atlantic Blvd., South Gate, CA 90280. Send protests to: Irene Carlos, TA, ICC, 1321

Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 148002 (Sub-1TA), filed October 5, 1979. Applicant: BECO, INC., Route 1, Box 138, New Salem, ND 58563. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Contract carrier:* irregular routes: *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses (except commodities in bulk),* from Owatonna and Minneapolis, MN, and their commercial zones, to Bismarck, ND, under contract with Super Valu Stores, Inc., for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Super Valu Stores, Inc., 101 Jefferson Avenue South, Hopkins, MN 55343. Send protests to: H. E. Farsdale, DS, ICC, 657 2nd Avenue North, Room 268 Fed. Bldg. & U.S. Post Office, Fargo, ND 58102.

MC 148183 (Sub-4TA), filed October 25, 1979. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30501. Representative: Pauline E. Myers, Suite 348 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. *Canned fruit juices* from Lakeland, FL (facilities of Juice Bowl Products, Inc.) to points in AL, GA, NC, and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Borden Foods (Division of Borden, Inc.), 180 East Broad Street, Columbus, OH 43215. Send protests to: Sara K. Davis, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 148513 (Sub-1TA), filed October 29, 1979. Applicant: GARY W. WILCOX, dba, WILCOX TRUCKING COMPANY, P.O. Box 189, Washington, GA 31533. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., NE, Atlanta, GA 30326. *Lumber and lumber products,* from points in Coffee County, GA to points in FL for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Coffee Forest Products, Inc., P.O. Box 965, Douglas, GA 31533. Stubbs & Souther Lumber Company, Douglas, GA. Send protests to: Jean King, TA, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

Passenger Application

MC 145992 (Sub-4TA), filed October 1, 1979. Applicant: THE TOWN TOUR FUN BUS COMPANY, INC., d.b.a., FUN BUS SYSTEMS, 304 Katella Way, Anaheim, CA 92802. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Passengers and their baggage, and express and newspapers in the same vehicle with passengers,* between Buena Park, CA and Las Vegas, NV, serving the intermediate point of Fullerton, CA, from Buena Park, CA over California Highway 91 to junction California Highway 57, then California Highway 57 to junction Interstate Highway 10, then Interstate Highway 10 to junction Interstate Highway 15, then Interstate Highway 15 to Las Vegas, NV, and return over the same route, for 180 days. An ETA seeks up to 90 days operating authority. Supporting shipper(s): There are approximately 34 supporting shippers. They may be examined at Headquarters or the office listed below. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

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MC 11722 (Sub-69TA), filed October 2, 1979. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 N. E. Weidler St., Portland, OR 97232. *Rags, compressed in bales* from Helena, Missoula, Havre, Great Falls, Bozeman, and Butte, MT, to Seattle, WA, Portland, OR, and Fresno, CA, for 180 days. A corresponding ETA has been granted and a permanent will be filed. Supporting shipper(s): Salvation Army, P.O. Box 2585, Great Falls, MT 59403. Send protests to: D. Merine Galbraith, Transportation Asst., Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 111812 (Sub-695TA), filed September 26, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same as above). *Plumbing, plumbers goods and plumbers fittings,* from the facilities of Kohler Company in Sheboygan County, WI, to points in AZ, CA, ID, MT, NV, ND, OR, SD, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kohler Company, Kohler, WI 53044. Send protests to: J. L. Hammond, DS, ICC, Rm. 455, Federal Bldg., Pierre, SD 57501.

MC 113382 (Sub-26TA), filed October 23, 1979. Applicant: NELSEN BROS., INC., P.O. Box 613, Nebraska City, NE 68410. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Contract carrier; irregular routes, (a) *pet food* (except in bulk), and (b) *containers,* from Kansas City, KS, to points in NE, AR, TN, MO, MS, LA, TX, IA, and OK under a continuing contract(s) with Strongheart Products, Inc. of Kansas City, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Strongheart Products, Inc., Betty Welter, Traffic Manager, P.O. Box 2009, Kansas City, KS 66110. Send protests to: Carroll Russell, ICC, DS, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 124692 (Sub-314TA), filed October 24, 1979. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, P.O. Box 1680, Fargo, ND 58107. *Iron and steel articles* from the facilities of Western Tube & Conduit Corp. at Long Beach, CA to points in AZ, NM, TX and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Western Tube & Conduit Corporation, 2001 East Dominguez Street, Long Beach, CA 90810. Send protests to: Paul J. Labane, DS, ICC, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 135592 (Sub-7TA), filed October 29, 1979. Applicant: U & R EXPRESS, INC., P.O. Box 2369, White City, Oregon 97501. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Avenue, Portland, Oregon 97210, 503-226-3755. *Wood residuals* from points in Klamath and Jackson Counties, OR to points in Siskiyou County, CA for 180 days. Supporting shipper(s): Weyerhauser Company, Tacoma, WA 98477. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 136212 (Sub-31TA), filed October 25, 1979. Applicant: JENSEN TRUCKING COMPANY, INC., P.O. Box 349, Gothenburg, NE 69138. Representative: Scott T. Robertson, Peterson, Bowman & Johanns, 521 S. 14th St. Suite 500, P.O. Box 81849, Lincoln, NE 68501. *Feed, feed ingredients and feed supplements* from Lubbock, TX to points in IA, IL, IN, KS, MO, ND and SD for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Progressive Grain Processing, Joe Tarver, President, P.O. Box 3520, Lubbock, TX 79452. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 138322 (Sub-16TA), filed October 26, 1979. Applicant: BHY TRUCKING, INC., 9231 Whitemore, El Monte, CA 91733. Representative: Robert Fuller, Suite 310, 13215 E. Penn Street, Whittier, CA 90602. *Iron or steel angles,* from the facilities of Cunningham Manufacturing Co., in Riverside, CA and Wilmington, CA to points and places in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Cunningham Manufacturing Co., 2400 E. Pacific Coast Hwy, Wilmington, CA 90744. Send protests to: Irene Carlos, TA, ICC, 1321 Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 138882 (Sub-321 TA), filed October 22, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). *Household liquid bleach, dish detergents, materials, equipment and supplies used in the manufacturing, sale, and distribution of the commodities in above* (restricted against commodities in bulk). Between the facilities of National Marketing Associates, Inc. located at or near New Orleans, LA and points in MS, AL, GA, TN, and FL, for 180 days. Supporting shipper(s): National Marketing Associates, Inc., P.O. Box 1554, Gretna, LA 70053. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 138882 (Sub-322TA), filed October 17, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: J. W. Segrest (same address as above). *Containers and container chassis:* From Troy, AL to New Orleans, LA; Houston, TX; Miami, FL; Savannah, GA; and Mobile, AL. For subsequent movement by water from Mobile, AL. for 180 days. Supporting shipper(s): Cash Trailer, Inc., P.O. Box 169, Troy, AL 36081. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 138882 (Sub-323TA), filed October 10, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). *Lumber,* from Clifton & Crockett, TX to the facilities of Henderson, Black and Greene, Inc. located at Troy, AL, for 180 days. Supporting shipper(s): Henderson, Black and Green, Inc., 110 Pike Street, Troy, AL 36081. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 138882 (Sub-324TA), filed October 15, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: James W. Segrest (same address as above). *Roofing, roofing materials, equipment, and supplies used in the manufacture, sales, and distribution of roofing, and roofing materials.* Between the facilities of the Masonite Corporation—Roofing Division located at or near Meridian MS, and points in AL, FL, GA, LA, Houston and Dallas, TX., for 180 days. Supporting shipper(s): Masonite Corporation—Roofing Division, P.O. Box 5777, Meridian, MS 39301. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 138882 (Sub-325TA), filed October 5, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladston, NJ 07934. *Lumber and lumber mills products,* from points in CA, to points in the US east of and including the states of ND, SD, NE, KS, OK, and TX, for 180 days. Supporting shipper(s): Pacific Southeast Forest Products, 5330 Primrose Drive, Fair Oaks, CA 95628. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 140612 (Sub-75TA), filed October 24, 1979. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour (same address as applicant). *(1) such merchandise as is dealt in by wholesale, retail, and chain grocery and feed business houses; paste; and dairy, flour, and soy products; and (2) materials, ingredients, and supplies used in the manufacture, distribution, and sale of the products named in (1)* between points in the United States (except AK and HI), for 180 days, restricted to traffic originating at or destined to the facilities used by Ralston Purina Company. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 140612 (Sub-77TA), filed September 28, 1979. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour (same address as applicant). (1) *kitchen, bathroom, and household cabinets,* and (2) *materials, equipment, and supplies used in the manufacture, sale, and distribution of (1) above (except commodities in bulk, in tank vehicles)* between Des Moines, IA, on the one hand, and, on the other, points in and west of MI, OH, KY, TN, NC, SC, GA, and FL, for 180 days. RESTRICTED to traffic originating at or destined to the facilities used by Francisco Cabinet Corp. An underlying ETA seeks 90 days authority. Supporting shipper(s): Francisco Cabinet Corp., 1525 Illinois, Des Moines, IA 50314. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 141522 (Sub-1TA), filed September 26, 1979. Applicant: NORTH WEST COMMERCIAL HAULING, LTD., 10753 180th Street, Edmonton, AB, Canada T5S 1G6. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. *New construction equipment* from points in IA, IL and MO to ports of entry on the International Boundary line between the U.S. and Canada for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North West Commercial Sales (1973) Ltd., 10940–166A Street, Edmonton, AB, Canada T5P 3V5. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 142592 (Sub-6TA), filed October 31, 1979. Applicant: H. L. STANSELL, INC., 1221 U.S. Alternate Hwy 19, P.O. Box 158, Palm Harbor, FL 33563. Representative: David C. Venable, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, D.C. 20001. *Clay products and furniture* from Laredo, TX to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carol Melton & Audrey Rodgers d/b/a, ACT IMPORTS, 2101 Starkey Rd., Largo, FL 35540. Send protests to: Donna M. Jones, T/A, ICC-BOp, Monterey Bldg., Room 101, 8410 N.W. 53rd Ter., Miami, FL 33166.

MC 142672 (Sub-92TA), filed October 24, 1979. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Frozen meat and seafood* from points in CA to points in the U.S. (except AK and HI), restricted to transportation of traffic originating at the facilities of or used for the account of Australaisian Meat and Seafoods, Inc.; and restricted to transportation of traffic having a prior movement via water, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): Australaisian Meat & Seafoods, Inc., 1205 East Olympic Blvd., Los Angeles, CA 90640. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 143002 (Sub-10TA), filed October 24, 1979. Applicant: C.D.B., INCORPORATED, 155 Spaulding, SE, Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Contract carrier; irregular routes; *drugs and toilet articles, materials and supplies* used in the manufacture, sale and distribution thereof, (i) between Allegan, MI and its commercial zone, on the one hand, and, on the other, Tempe, AZ, Portland, OR, Los Angeles and San Francisco, CA and their respective commerical zones; and (ii) from Tempe, AZ and its commerical zone to Los Angeles and San Francisco, CA and their respective commercial zones, under continuing contract or contracts with L. Perrigo Company, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): L. Perrigo Company, 117 Water Street, Allegan, MI 49010. Send protests to: C.

R. Flemming, DS, ICC, 300 E. Michigan Avenue, Lansing, MI 48933.

MC 143002 (Sub-11TA), filed October 23, 1979. Applicant: C.D.B., INCORPORATED, 155 Spaulding, SE, Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Contract carrier; irregular routes; *household and personal care products and materials and supplies used in the manufacture and distribution thereof,* between Ada, MI, on the one hand, and, on the other, Davenport, IA and its commerical zone under continuing contract with the Amway Corporation, for 180 days. Supporting shipper(s): Amway Corporation, 7575 E. Fulton Road, Ada, MI 49301. Send protests to: C. R. Flemming, DS, ICC, 201 Corr Bldg., 300 E. Michigan Avenue, Lansing, MI 48933.

MC 143002 (Sub-12TA), filed September 24, 1979. Applicant: C.D.B., INCORPORATED, 155 Spaulding, SE, Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Contract carrier; irregular routes, *household and personal care products and materials and supplies* used in the manufacture and distribution thereof, between Ada, MI, on the one hand, and, on the other, Aurora, CO and its commercial zone, under a continuing contract with the Amway Corporation for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Amway Corporation, 7575 E. Fulton Road, Ada, MI 49301. Send protests to: C. R. Flemming, DS, ICC, 201 Corr Building, Lansing, MI 48933.

MC 143702 (Sub-6TA), filed September 28, 1979. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66105. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. *Foodstuffs (except commodities in bulk) vehicles equipped with mechanical refrigeration,* From the facilities of Inland Storage Distribution Center at Kansas City, KS to points in MO. Supporting shipper(s): Inland Storage Distribution Center, 6500 Inland Drive, Kansas City, KS 66110. Send protests to: Vernon Coble D/S, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 144572 (Sub-30TA), filed October 26, 1979. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. *Building materials,* from the facilities of Alside, Inc. and its division at Cuyahoga Falls, Wadsworth and West Salem, OH to points in CO, IA, KS, MO, NE and WY, for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper(s): Alside, Inc., P.O. Box 2010, Akron, OH 44309. Send protests to: R. Buchanan, 492 U.S. Customs House, Denver, CO 80202.

MC 144622 (Sub-111TA), filed September 4, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Confectionery* requiring mechanical refrigeration, except in bulk, from plantsites of M&M/Mars at Hackettstown, NJ and Elizabethtown, PA to points in MI, OH, IL and PA, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): M&M/Mars, Division Mars, Incorporated, High St., Hackettstown, NJ 07840. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 144622 (Sub-112TA), filed September 12, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72201. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Toilet preps and related sundries* carried by retail stores, between Detroit, MI on the one hand, and on the other, all points in the U.S. for 180 days. Supporting shipper(s): Supreme Distributors Company, Advance Promotions, Inc., 6501 E. McNichols, Detroit, MI 48212, 5570 Bellevue Ave., Detroit, MI 48211. Send protests to: William H. Land, Jr., DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 144622 (Sub-113TA), filed October 2, 1979. Applicant: GLEN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, Arkansas 72219. Representative: Phillip B. Glenn (same as applicant), and Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Foodstuffs,* from Louisville, KY to points in AL, AR, CT, FL, GA, IL, IN, KS, LA, MA, MD, MI, MO, MS, NC, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WI and WV, for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting Shipper(s): Paramount Foods, Inc., 2700 Fern Valley Road, Louisville, KY 40213. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 144622 (Sub-114TA), filed October 12, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Such commodities as are dealt in by discount or variety stores* (except commodities in bulk), from all points in IL, IN and IA to the facilities of Wal-Mart Stores, Inc. in the state of AR, for 180 days. Underlying ETA seeks 90 days authority. Supporting Shipper(s): Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 144622 (Sub-115TA), filed October 18, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Household products and related articles, dessert preparations, milk food liquid, beverage preparations, noncarbonated water, hair care toiletries and hair care equipment, drugs shampoo, soap and toilet articles,* from the facilities used by Bristol-Myers Company, and its subsidiaries, Clairol, Inc., Drackett Company, Mead-Johnson & Company, Monarch Crown Corporation, and Westwood Pharmaceuticals, Inc., at Dallas, TX to points in LA, for 180 days. Supporting Shipper(s): Bristol-Myers Company, 345 Park Ave., New York, NY 10022. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 145072 (Sub-29TA), filed September 21, 1979. Applicant: M.S. CARRIERS, INC., 7372 Eastern Ave., Germantown, TN 38138. Representative: A. Doyle Cloud, 3800 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. *Such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses, soy products, paste flour products and (2) materials ingredients and equipment and supplies used in development, manufacture, distribution and sale of items in (1) above except commodities in bulk,* between the facilities used by Ralston Purina Co. at or near Oklahoma City, OK and points in AR, LA, MS, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Puring Co., 13700 N. Lincoln Blvd., Edmond, OK 73034. Send protests to: Floyd A. Johnson, Suite 2006–100 N. Main St., Memphis, TN 38103.

MC 145202 (Sub-5TA), filed September 28, 1979. Applicant: K-LINES, LTD., 3125 South 11th Street, Council Bluffs, IA 51501. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Meat, meat products, and meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 768 (except hides and commodities in bulk)* from the facilities of Prime Meat Processors Inc. at Omaha, NE to points in AR, AL, FL, GA, LA, MO, MS, NC, SC and TN under continuing contract(s)

with Prime Meat Processors, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Prime Meat Processors, Inc., 1202 Jones, Omaha, NE 68102, William Winfield, Sales Manager—Food Service. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 145842 (Sub-8TA), filed October 31, 1979. Applicant: SUNDERMAN TRANSFER, INC., P.O. Box 63, Windom, MN 56101. Representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001. *Hides, green or green salted,* from the facilities of John Morrell Company located at or near Estherville, IA to Kansas City, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Judith L. Olson, TA, ICC, 414 Fed. Bldg., 110 S. 4th St., Minneapolis, MN 55401.

MC 146192 (Sub-3TA), filed August 2, 1979. Applicant: SANDHILLS GRAIN, INC., 524 Augusta Street, Bassett, NE 68714. Representative: Robert A. Wichser, P.O. Box 417, Sioux City, IA 51102. Contract carrier, irregular routes: (1) *Home decorating trimmings and accessories* from Traverse City, MI; Grand Island, NE; and Big Springs, TX to points in CA, IL, IN, MI, NE, OH, TX and WI (2) *Materials, supplies and equipment used in the manufacture, sale and distribution of home decoration trimmings and accessories* from states specified in (1) above to the named origin points, for 180 days. Restriction: Said service is limited to a transportation service performed under a continuing contract(s) with Burwood Products Company. Supporting shipper(s): Burwood Products Company, 807 Airport Access Road, Traverse City, MI. Send protests to: D/S Caroll Russell, ICC, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 146442 (Sub-1TA), filed October 24, 1979. Applicant: CLEARFIELD TRANSPORTATION COMPANY, P.O. Box 313, 5th & Pine Streets, Clinton, MO 64735. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. *Contract, Irregular* (1) *Cheese, cheese products, and pasteurized process cheese product substitutes,* between points in the United States (except AK and HI); and, (2)(a) *additives for the commodities in (1) above;* (b) *cleaning compounds, salt, corn meal, mush, oleomargarine, salad dressing, butter, fish bait;* (c) *commodities otherwise exempt from economic regulations under 49 USC 10526* (a)(6), when moving in the same vehicle with the commodities in (1) and (2) (a) and (b) above; and (d) *materials, equipment, and supplies used in the manufacture, development, packaging, and distribution of the commodities in (1) above,* between Clinton, MO, on the one hand, and, on the other, point in the United States (except AK and HI) under a continuing contract(s) with Clearfield Cheese Company, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clearfield Cheese Company, P.O. Box 120, Curwensville, PA 16833. Send protests to: Vernon V. Coble, DS, I.C.C. 600 Fed. Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 146782 (Sub-23TA), filed September 25, 1979. Applicant: ROBERTS CONTRACT CARRIER CORP., 300 First Avenue, South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Bldg., Nashville, TN 37201. *Welded and seamless tubing,* from the facilities of Ohio Steel Tube Co., at or near Shelby, OH, to points in AL, AR, GA, KY, MS, NC, OK, SC, TN, TX, VA, & WV, for 180 days. Supporting shipper(s): Ohio Steel Tube Co., W. Main St., Shelby, OH 44875. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 146862 (Sub-4TA), filed October 26, 1979. Applicant: CREECH BROS. TRUCK LINES, INC., 100 Industrial Dr., Troy, MO 63379. Representative: Richard A. Mehley, 1000—16th St., NW, Washington, D.C. 20036. *Contract,* irregular: *Furniture and furniture parts* (other than upholstered) *plastic articles, display racks, wood, and furniture stock, and materials, supplies and equipment* used by furniture manufacturers, for the account of Gerber Industries, Inc., between St. Peters, MO and Dunn, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gerber Industries, Inc., 1 Gerber Industrial Dr., St. Peters, MO 63376. Send protests to: Peter E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146992 (Sub-6TA), filed October 26, 1979. Applicant: PHIL-MART TRANSPORTATION, INC., P.O. Box 126, Braselton, GA 30517. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. (1) *Foodstuffs, and (2) cleaning, scouring or washing compounds, napkins, tablecloths, dishes, cups, trays, forks, knives and spoons, when transported in mixed loads with foodstuffs* (a) from the facilities of Prime Packing Co., at or near Chicago, IL to points in the U.S. (except AK, AL, AR, FL, GA, HI, IN, KY, LA, MS, OH, TN, TX, and WV) (b) from points in the U.S. (except AK and HI) to the facilities of Prime Packing Co., at or near Chicago, IL, restricted to the transportation of traffic destined to the facilities of Prime Packing Co., at or near Chicago, IL, for 180 days. Supporting shipper(s): Prime Packing Co., 4551 South Racine, Chicago, IL 60609. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 147112 (Sub-3TA), filed October 2, 1979. Applicant: L. H. BRYAN, d.b.a. BRYAN TRUCKING COMPANY, Route 4, Circle Creek Drive, Stockbridge, GA 30281. Representative: Marc A. Pearl, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, Atlanta, GA 30326. *Lumber and lumber products* (except commodities in bulk), from points in GA and AL to points in GA, AL, NC, SC, FL, TN, KY, VA, LA, & MS, for a period of 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Southern International Lumber Ind., Inc., P.O. Box 90943, East Point, GA 30364. Slaughter Brothers, 1800 Montreal Circle, Tucker, GA 30084. Send protests to: Sara K. Davis T/A, ICC, 1252 W. Peachtree Street, NW Room 300, Atlanta, GA 30309.

MC 147242 (Sub-8TA), filed September 25, 1979. Applicant: 12-90 PLAZA CORP., d.b.a., PLAZA FREIGHT TRANSPORT, 12-90 Plaza Road, Fairlawn, NJ 07410. Representative: Arthur Liberstein, 888 Seventh Avenue, New York, NY 10019. Contract carrier, irregular routes, *drugs, medicines, sugar cane, other than raw, acids N.C.I. and animal feed supplements,* except commodities in bulk, between Belvidere, NJ on the one hand, and on the other, Bell, San Leandro and Fresno, CA, Des Plaines, IL, Ames, IA and Dallas, TX, under a continuing contract with Hoffman LaRocke, Inc., for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Hoffman-LaRoche, Inc., Nutley, NJ. Send protests to: Joel Morrows, DS, ICC, 744 Broad St., Rm 522, Newark, NJ 07102.

MC 147662 (Sub-3TA), filed October 29, 1979. Applicant: KMC TRANSPORT, INC., P.O. Box 962, Caldwell, ID 83605. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. *Wrecked, disabled or repossessed motor vehicles, recreational vehicles, cargo trailers, vessels and parts thereof, not compressed auto bodies,* between points in CA, CO, ID, KS, MT, NV, NM, OR, TX, UT, WA and WY, on the one hand, and on the other, points in Canyon and Ada Counties, ID, under continuing contract for Idaho Salvage Pool, for 180 days. An underlying ETA seeks 90 days authority. (Contract, Irregular). Supporting shipper(s): Idaho Salvage

Pool, 3515 Cleveland, Caldwell, ID 83605. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 147712 (Sub-7TA), filed September 20, 1979. Applicant: MID-WESTERN TRANSPORT, INC., 10506 South Shoemaker Avenue, Santa Fe Springs, California 90670. Representative: Joseph Fazio, 10506 South Shoemaker Avenue, Santa Fe Springs, California 90670. *Beverages, alcoholic,* from New York City, NY, Elizabethport, NJ, Baltimore, MD, Relay, MD, Dundalk, MD, Chicago, IL, Lawrenceburg, KY, to Los Angeles County, CA, Orange County, CA, San Bernardino County, CA, San Diego County, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Bohemian Distributing Co., Inc., Controller-Treasurer, 11428 Sherman Way, North Hollywood, California 91605. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, California 90053.

MC 147992 (Sub-3TA), filed September 26, 1979. Applicant: MAGGERT & FUQUA, Partnership—Lloyd Maggert and Robert Fuqua, Rural Route 3, Paris, IL 61944. Representative: Edward D. McNamara, Jr., 907 South Fourth Street, Springfield, IL 62703. *Ag limestone* from Cloverdale, IN to Edgar and Douglas Counties, IL; *dry fertilizer* from Henderson and Irvington, KY; and Mt. Vernon, IN to Edgar County, IL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keys Fertilizer Sales, R.R. #6, Paris, IL 61944. Send protests to: Annie Booker, TA, ICC, 219 S. Dearborn, Room 1386, Chicago, IL 60604.

MC 148012 (Sub-1TA), filed September 26, 1979. Applicant: EXCURSIONS UNLIMITED, INC., 3500 4th Street W., Birmingham, AL 35208. Representative: Gene Davis (same address as above). *Passengers and baggage in the same vehicle with passengers, in special and charter operations,* between points in Jefferson, Shelby and St. Clair Counties, AL, and points in GA, OH, MI, KY, TN, FL, LA, MS, NC, IL, NY, CA and TX, for 180 days. Supporting shipper(s): There are 6 Supporting Shippers, the materials of which may be examined at Washington, DC, ICC, or Birmingham, AL Field Office. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 148292 (Sub-3TA), filed October 26, 1979. Applicant: J. POSA, INC., One North First Street, Fulton, NY 13069. Representative: Piken & Piken, 95–25 Queens Blvd., Rego Park, NY 11374. *Malt beverages,* from Philadelphia, PA and points in its commercial zone, to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, VT, VA and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Van Munching & Co., Inc., 51 W. 51st St., New York, NY 10019. Send protests to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 148342 (Sub-1TA), filed September 28, 1979. Applicant: J AND J MOTOR FREIGHT LINES, INC., 1516 N. 13th St., St. Louis, MO 63106. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract carrier, irregular routes, (1) *Candy* from the facilities of Switzer Candy Co., a division of Beatrice Foods Co., St. Louis, MO, to points in IN, OH, PA, NY, NJ, RI, CT, ME, MA, MD, DE, VA, WV, VT, NH and DC; and *materials* and *supplies* used in the manufacture and distribution of candy (except in bulk) on return; and (2) *Licorice Mass* from Camden, NJ to St. Louis, MO, such service to be performed under a continuing contract or contracts with Switzer Candy Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Switzer Candy Co., Div. of Beatrice Foods Co., 1600 N. Broadway, St. Louis, MO 63102. Send protests to: P. E. Binder, TS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 148442 (Sub-1TA), filed October 29, 1979. Applicant: SOUTHEASTERN FOOD DISTRIBUTORS, INC., d.b.a. SOUTHEASTERN TRANSPORT COMPANY, 607 10th Avenue, North, Nashville, TN 37202. Representative: Lawson L. Turk (same address as applicant). *Frozen Bakery Products,* from Tennessee Doughnut Company in Nashville and Memphis, TN to points in AR, AL, MS and GA, for 180 days. Supporting shipper(s): Tennessee Doughnut Corp., 2975 Armory Drive, Nashville, TN 37204. Send protests to: Glenda Kuss, TA, ICC, A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 148462 (Sub-1TA), filed October 23, 1979. Applicant: ABLE TRUCKING, INC., Route 2, Box 157, Borden, IN 47106. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. *Foodstuffs,* except frozen or in bulk, from the facilities of Snake Foods, Inc. at Jeffersonville, IN, to Newport News, VA, Houston, TX, York, PA, Newington, CT, Kansas City, MO, Lincoln, NE, Fargo, ND, Green Bay, WI, Minneapolis, and St. Paul, MN, Sioux Falls, SD, Tulsa, OK, and St. Louis, MO and their respective commercial zones and to points in IL, MI and OH for 180 days. Supporting shipper(s): Snack Foods, Inc., P.O. Box 399, Jeffersonville, IN 47130. Send protests to: Beverly J. Williams, TA, ICC, 46 E. Ohio St., Rm 420, Indianapolis, IN 46204.

MC 148492 (Sub-1TA), filed October 29, 1979. Applicant: LYLE R. WHITE, Star Route, Box 29A, Dixfield, ME 04224. Representative: (same as applicant). Contract: Irregular: *Coal,* in bulk, in dump type vehicles from Winslow and Westbrook, ME to the port of entry on the International Boundary Line between the U.S./Canada at or near Jackman, ME. Restricted to transportation performed under bilateral contract with Zielinski Brothers, Agawam, MA. An underlying ETA seeks 90 days authority. Supporting shipper(s): Zielinski Brothers, 218 Shoemaker Lane, Agawam, MA 01001. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Rm. 303, Portland, ME 04101.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-39541 Filed 12-27-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 250
Friday, December 28, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-261, Amdt. 4; Dec. 21, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition and deletion of items from the December 20, 1979, agenda.

TIME AND DATE: 9:30 a.m., December 20, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

Deletion

15. Docket 37109, Limitation of Excess Baggage Allowance Proposed by Eastern Airlines, Inc., in Certain Caribbean Markets—report of an informal conference of interested persons (Memo 9286-B, BDA)

Addition

3b. Changes in the Standard Industry Fare Level (BDA)

3c. Texas International Holiday discount program (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 15 was deleted from the December 20, 1979 agenda in order to allow the staff additional time for coordination. Item 3b had to be acted on well before January 1 when the new SIFL Level is to become effective so that carriers and the public will have sufficient notice to make any plans regarding any implementation of increased fare levels. Short notice was requested because the calculations are based upon, in part, fuel cost data for November 1979 which does not arrive at the Board before December 20. Item 3c was added because the carrier approached the staff the afternoon of December 19, to determine whether staff, acting under delegated authority, would authorize a new and complex discount fare program for the Holiday. The staff felt that it should request instructions from the Board. Due to the timing of the request no advance notice was possible. Accordingly, the following members voted that Item 15 be deleted and that Items 3b and 3c be added to the December 20, 1979 agenda and that no earlier announcement of these changes was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2490-79 Filed 12-26-79; 3:38 pm]

BILLING CODE 6320-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552), notice is hereby given that at 12:15 p.m. on Friday, December 21, 1979, the Board of Directors of the Federal Deposit Insurance Corporation met by telephone conference call to consider a recommendation regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, New York (Case No. 44, 152-L).

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6) and (c)(9)(B)).

Dated: December 21, 1979.

Federal Deposit Insurance Corporation.
Alan J. Kaplan,
Assistant Executive Secretary.

[S-2485-79 Filed 12-26-79; 11:38 am]

BILLING CODE 6714-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: January 2, 1980, 1 p.m.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Agreement No. 10320-2: Amendment to equal access agreement in Brazilian trade to reallocate shares.

2. Avion Forwarding, Inc.—Application for independent ocean freight forwarder license.

3. Petitions of the West Coast United States & Canada/India Pakistan, Ceylon & Burma Rate Agreement and the India, Pakistan, Ceylon & Burma/West Coast United States Rate Agreement to allow officers or employees thereof to serve as policing authority.

4. Docket No. 79-90: Ernest L. Levine d/b/a Gerald Export & Import Company v. Hapag-Lloyd, A.G.—Review of order of dismissal.

5. Docket No. 79-61: Rene Lopez and David Romano d/b/a United Dispatch Services—Independent Ocean Freight Forwarder License No. 1381—Decision on request for oral argument.

6. Docket No. 78-46: Financial Exhibits and Schedules of Common Carriers in the Domestic Offshore Trades—Review of comments.

Portions Closed to the Public

1. Docket No. 78-32: Pacific Westbound Conference Equalization Rules and Practices—Petition of Port of Seattle to intervene.

CONTACT PERSON FOR MORE INFORMATION:
Francis C. Hurney, Secretary, (202) 523-5725.

[S-2491-79 Filed 12-26-79; 3:45 pm]

BILLING CODE 6730-01-M

4

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER": CITATION OF PREVIOUS ANNOUNCEMENT: December 20, 1979, 44 FR 75549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: December 20, 1979, 8:30 am.

CHANGES IN THE MEETING:

Additions of the following items to the open session:

2. Rates of Far Eastern Shipping Company.
3. Proposed increase in demurrage charges filed by Puerto Rico Maritime Shipping Authority.

[S-2484-79 Filed 12-26-79; 9:10 am]

BILLING CODE 6730-01-M

5

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: December 27, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Thursday, December 27, 1:30 p.m.

1. Briefing on Scope of Issues Involved in Setting Standards for Licensee Technical Specifications (Approximately 1½ hours, public meeting).
2. Affirmation Session (Approximately 5 minutes, public meeting, items are tentative).
a. Delegation of Authority to Director, NMSS.
b. Amendment to 10 CFR Part 2 re: Discipline in Adjudicatory Proceedings.

ADDITIONAL INFORMATION: The Discussion of TMI Unit 1 Management Capability and Technical Resources scheduled for Thursday, December 20, was POSTPONED to the Week of January 7, 1980.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, (202) 634-1410.

Walter Magee,

Office of the Secretary.

[S-2486-79 Filed 12-26-79; 1:31 pm]

BILLING CODE 7590-01-M

6

POSTAL SERVICE (Board of Governors).

Notice of Meetings

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. § 552b), hereby gives notice that it intends to hold meetings at 3:30 P.M. on Monday, January 7, 1980, and at 9:00 A.M. on Tuesday, January 8, 1980, in Room 205 of the Management Sectional Center, 5350 South Western, Oklahoma City, Oklahoma. Except as indicated in the following paragraphs, the meetings are open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On December 4, 1979, the Board of Governors voted to close to public observation a portion of its next meeting. Each of the members of the Board voted in favor of partially closing this meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Conway, Senior Assistant Postmaster General Finch, and Secretary of the Board Cox.

The portion of the meeting to be closed will consist of a continuation of the discussion of the Postal Service's possible strategies concerning future postal ratemaking which was commenced at the Board's meeting of December 4, 1979.

Since the last Board meeting, the Governors have received two Recommended Decisions from the Postal Rate Commission on proposed changes in the Domestic Classification Schedule: the Commission's Opinion and Recommended Decision of December 5, 1979, regarding the Postal Service's bulk parcel post proposal (Commission Docket No. MC78-1) and the Commission's Opinion and Recommended Decision dated December 17, 1979, regarding the Postal Service's electronic mail proposal (Commission Docket No. MC78-3). The Governors are expected to review these matters during their meetings on January 7 and 8, 1980. Should they determine to go beyond a general review of what the Rate Commission has recommended in each of these cases and to discuss what action they should take, they may elect to close the portion or portions of the meeting at which these agenda items are discussed to public observation, since the discussion is likely to specifically concern the participation of the Postal Service in a civil action or proceeding.

Agenda

Monday Afternoon Session

1. Discussion of Postal Service ratemaking strategy. (The Board will discuss Postal Service ratemaking plans. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter will be closed to the public.)
2. Recommended Decision of the Postal Rate Commission re Bulk Parcel Post. (The Governors will consider the Recommended Decision on December 5, 1979, recommending that the Postal Service's proposal for restructuring the parcel post subclass of the Domestic Mail Classification Schedule be rejected. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter may be closed to the public. If the Governors elect not to close this portion of the meeting, this item will be discussed at the Tuesday session.)

Tuesday Morning Session

1. Minutes of the previous meeting.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Report of the Regional Postmaster General. (Mr. Cooper, Regional Postmaster General, will report on postal conditions in the Southern Region.)
4. Annual Report on open meetings compliance. (Mr. Cox, General Counsel, will present for approval of the Board the Annual Report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)
5. Annual Report of the Postmaster General. (The Board will consider the Annual Report of the Postmaster General to the Board concerning the operations of the Postal Service, as required by 39 U.S.C. § 2402. Upon approval thereof, or after making such changes as it considers appropriate, the Board is to transmit this report to the President and the Congress.)
6. Capital Investment Project: New General Mail Facility for San Francisco, California. (Mr. Biglin, Senior Assistant Postmaster General for Administration, will present a proposal to increase the amount which the Board authorized for investment at its April 4, 1978, meeting for a new general mail facility and vehicle maintenance facility in San Francisco.)
7. Recommended Decision of the Postal Rate Commission on Electronic Computer Originated Mail Service (E-COM). (The Governors will consider the Rate Commission's Opinion and Recommended Decision dated December 17, 1979, re electronic mail classification proposal, 1978, (Commission Docket No. MC78-3). As stated in the Notice of Meeting, the part of the meeting that will be devoted to this matter may be closed to the public.)
8. Election of Chairman and Vice-Chairman of the Board and appointment of Committees of the Board. (Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice-Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and a Vice-Chairman. In addition, the terms of appointments to Committees of the Board expire at the end of each Annual Meeting.

The Chairman of the Board appoints the Chairman and members of each committee.)

Louis H. Cox,

Secretary.

[S-2467-79 Filed 12-26-79; 3:11 pm]

BILLING CODE 7710-12-M

7

POSTAL SERVICE (Board of Governors).

Notice of Committee Meeting

The Committee on Postal Rates of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 7:30 A.M. on Tuesday, January, 8, 1980, in Room 205 of the Management Sectional Center, 5350 South Western, Oklahoma City, Oklahoma.

The Committee will discuss the Recommended Decision of the Postal Rate Commission of December 17, 1979, regarding the Electronic Computer Originated Mail Service (E-COM) (Commission Docket No. MC78-3). The Committee may elect to close the meeting to public observation, since the discussion is likely to specifically concern the participation of the Postal Service in a civil action or proceeding. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

Louis H. Cox,

Secretary.

[S-2468-79 Filed 12-26-79; 3:11 pm]

BILLING CODE 7710-12-M

8

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 31, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meetings will be held on Thursday, January 3, 1980, at 9:30 a.m., immediately followed by a closed meeting.

The Commissioners, their legal assistants, the secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(4)(8)(9)(i) and (10).

Commissioners Loomis, Evans, and Pollack determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Thursday, January 3, 1979, at 9:30 a.m., will be:

1. Consideration of what response to make to the request of the House Committee on Interstate and Foreign Commerce for the Commission's comments on S. 885, the "Pacific Northwest Electric Power Planning and Conservation Act." Section 9(h) of the bill provides a conditional legislative exemption from the requirements of the Public Utility Holding Company Act of 1935 for companies who sponsor any company which owns or operates facilities for the generation of electricity primarily for sale to the Bonneville Power Administrator, in accordance with the scheme of S. 885. For further information, please contact Diane Sanger at (202) 272-2447.

The subject matter of the closed meeting scheduled for Thursday, January 3, 1980, immediately following the 9:30 a.m. open meeting, will be:

Formal orders of investigation.

Formal order of investigation and access to investigative files by Federal, State, or Self-Regulatory Authorities.

Order compelling testimony.

Litigation matter.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceeding of an enforcement nature.

Institution of injunctive actions.

Regulatory matter regarding financial institution.

Opinons.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

December 26, 1979.

[S-2469-79 Filed 12-26-79; 3:31 pm]

BILLING CODE 8010-01-M

Federal Register

Friday
December 28, 1979

Part II

Department of the Interior

Bureau of Land Management

Wild Free-Roaming Horse and Burro Protection, Management and Control

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[Circular No. 2454]

Wild Free-Roaming Horse and Burro Protection, Management and Control

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the regulations relating to wild free-roaming horses and burros on the public lands. It implements the Wild Free-Roaming Horse and Burro Act as amended by the Public Rangelands Improvement Act of 1978. The amended rules will improve the protection, management and control of wild free-roaming horses and burros on the public lands.

DATE: Effective January 28, 1980.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (440), Bureau of Land Management, 18th & C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert J. Springer, (202) 343-4773.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Robert J. Springer of the Division of Wild Horses and Burros, Bureau of Land Management, Washington, D.C., assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Proposed rulemaking was published on pages 20724-20727 in the Federal Register of April 6, 1979, and invited comments for 60 days ending June 5, 1979. Comments were received from 34 sources including individuals, State governments, businesses, environmentalists, Federal agencies, humane societies and recreationists. These comments have been reviewed and analyzed. The following summarizes the comments, suggestions and actions taken.

Definitions

One comment suggested that the regulations include a timetable to preserve and maintain the ecological balance identified in the "excess animals" definition. The current inventories and resource management plans required by section 4730.1 will provide the timeliness and flexibility necessary to protect the environment from excess animals.

There were a few comments that felt it was unacceptable to use a wild free-roaming horse or burro for any kind of commercial gain. It would seem that the use of wild free-roaming horses or burros for commercial purposes that do not exploit their characteristic wildness is an acceptable alternative to the distasteful possibility of having to destroy the animals.

There were numerous requests to define the words "old", "sick" and "lame." Consequently, definitions of the three words have been added to these regulations and should help alleviate some of the concerns expressed about the fate of these animals.

It was suggested that the definition of "inhumane practices" be revised by using an expression such as "not using humane practices or procedures." Using the positive term—humane—to describe the negative term—inhumane—is not considered an acceptable method of definition.

It was suggested that there be a definition for a "qualified applicant." The term has not been defined because the qualifications are set out in the regulations, e.g. in sections 4740.4-2 and 4740.5. Further, the authorized officer could, on occasion, be faced with situations where a person might meet all the criteria of the definition, but still not be a desirable adopter for some reason left undefined.

It was suggested that the definition for "problem animal" as it presently appears in § 4700.0-5(e) be redefined. Since this definition was not under consideration in the proposed rulemaking it cannot be redefined in this final rule. A redefinition, however, is under consideration for the future.

Policy

As a result of suggestions made in some comments, the policy paragraph 4740.0-6(c)—has been revised to address itself only to those wild free-roaming horses and burros found on public lands and that the animals shall be considered "comparably with other resource values" in the development of resource management plans. And finally, the policy now provides for the "* * * allocation of appropriate portions of the available forage" to the animals when resource management plans are developed.

It was recommended by some comments that the policy contained in § 4700.0-6(d) be expanded to include the National Park Service and other agencies. This policy statement has been confined to the Forest Service and the Bureau of Land Management because they are the only two agencies, under the Secretarial level, mentioned in the Wild Horse and Burro Act. Additionally, the common boundaries of the two agencies are much more extensive than those with other agencies. The Bureau will cooperate with any agency where appropriate and possible. Coordination with other agencies is an integral part of the Bureau's planning regulations.

Inventory and Planning

Under § 4730.1(a) which deals with the inventory of wild free-roaming horses and burros, there was a question of how many animals constitute a herd. "Herd" has been defined by § 4700.0-5(c) and means one or more stallions and their mares or jacks and their jennies.

Also under § 4730.1(a), the frequency of "current inventories" was questioned. The National Academy of Sciences is presently studying the wild free-roaming horse and burro inventory procedures used by the Bureau. It was also recommended that there be periodic inventories of forage available for wild free-roaming horses and burros. This is essential to determine whether or not excess aminals are present on an area, but the frequency of the inventories has not yet been established.

There was a question as to how many animals must be present to be considered in multiple use planning. The answer is one or more.

It was recommended that § 4730(c)(2), which requires the determination of appropriate actions needed to achieve proper population levels, be expanded to require the maintenance of stable and viable breeding populations. This suggested change has not been added because it would not change the intent of the regulation as written.

Although there were many suggestions to identify additional persons or groups to be consulted about the actions necessary to protect, manage and control wild free-roaming horses and burros, only one change has been made in § 4730.1(d). Any State wildlife agency may be consulted now rather than only those within a given State. This has been done because a wildlife agency in Nevada might have information or experience that is applicable in Wyoming, or vice versa, as an example. It must be added that the paragraph allows the authorized officer to consult with anyone who has special expertise, knowledge or experience in the field of wild free-roaming horses or burros.

Concern was also expressed that the consultation process described in § 4730.1(d) would be too frequent. It is unlikely that reinventories and revisions of resource management plans will take

place often enough to cause any concern about this matter.

Capture

There were suggestions that the paragraph on "capture" specify a time limit for holding animals pending their disposal. A time limit has not been specified because of the differing numbers of applicants, availability of other ranges, relocation to distribution centers and problems of timing and availability of transportation. A time limit, with flexibility for special circumstances, is being considered for inclusion in a policy statement currently under development for wild free-roaming horses and burros.

Humane Use of Helicopters and Motor Vehicles

The section on the humane use of helicopters and motor vehicles which is part of the current regulations, was inadvertently left out of the proposed rulemaking. It is included and has been reintroduced here as § 4740.2 with minor changes from the current regulations.

A paragraph (c) has been added to this section. It sets out standards for the humane transportation of wild free-roaming horses and burros. Several comments expressed concern about humane transportation and suggested standards that would be too detailed for inclusion as regulations. These suggestions, however, will be given serious consideration when the Bureau of Land Management Manual is developed to provide detailed instructions for humane transportation.

Removal

To improve its clarity, § 4730.3 (which was § 4740.2 in the proposed rulemaking) has been restructured into three basic divisions: Paragraph (a) covers the removal of excess animals, paragraph (b) was inadvertently left out of the proposed rulemaking and has been reintroduced here from § 4740.3 of current regulations with minor nonsubstantive changes and paragraph (c) covers the removal of problem animals.

There were numerous expressions of concern that old, sick, or lame animals would be destroyed regardless of their overall physical condition. This is not the case and such fears should be allayed after reading the new definitions for old, sick and lame under § 4700.0–5.

It was apparent from some comments that there was a misunderstanding that all animals, once removed from an area, must be either destroyed, adopted or relocated. If the number of rounded-up animals is greater than the predetermined number of excess animals, then some of the animals cannot be considered excess and may be returned to the public lands.

Another apparent misunderstanding was that an old, sick or lame animal must be rounded-up before it can be humanely destroyed. This misunderstanding was, at least in part, caused by the oversight of not including in the proposed rules what is now § 4740.3(b) in this rulemaking, but is § 4740.3 of the existing regulations.

It was suggested that the authorized officer predict where excess animals would develop and remove the animals in advance of the buildup. Although there is much about biological communities that might be predictable most of the time, there is also an unpredictability—epidemic outbreaks of diseases, for example—that makes it imprudent to require predictions.

It was recommended that the expression "destroyed in the most humane manner possible" as used in §§ 4740.3 (a)(3) and (b) should be clarified and interpreted. The need to destroy an animal can occur under such a wide variety of circumstances and times that a set of guidelines for destruction is impractical. An animal could be found at locations or under weather conditions that would preclude the use of a veterinarian to provide the most humane method. It is possible also that there could be disagreement among veterinarians themselves as to what method is most humane. This is further complicated by the continual development of new and improved drugs.

Also in connection with the circumstances that make it necessary to destroy an animal, the regulations have been rewritten to emphasize that humane destruction is the primary consideration and that cost effectiveness is secondary.

Acts of Mercy

Comments about acts of mercy (§ 4740.3–1) suggested that there be provision for destroying an animal at the site of capture. The authorized officer is allowed this discretion by section 4740.3(c). It was also suggested that there be provision for acts of mercy applicable to adopted animals. Section 4740.3–1 is intended to apply to all animals whether adopted or not. In connection with this, it is reasonable to assume that a veterinarian would make mention of an act of mercy in the statement required by § 4740.4–2(f).

There were also recommendations as to which drugs to use—and not to use—in performing an act of mercy. As mentioned previously, this is considered impractical because of the possible variations in the opinions of veterinarians and the continual development of new drugs.

It was suggested that an animal not lose its status as a wild free-roaming horse or burro if adopted prior to the effective date of these regulations. The apparent concern here was that title to large numbers of animals might be granted to someone who would sell them to a slaughterhouse upon receipt of title. Since the authorized officer cannot grant title for more than four animals per year to any qualified adopter, that small number would limit the potential for making a business of selling animals for conversion to commercial products.

There was concern expressed that the natural death of an animal referred to in § 4740.3–2(b) could not be verified. This possibility is covered in § 4740.4–2(f) which requires that the authorized officer receive a written statement of a veterinarian of the apparent cause of death.

One comment questioned how one would be able to distinguish between an animal that is a wild free-roaming horse or burro and one that has become the legal property of an adopter. The legal ownership of a former wild free-roaming horse or burro can be confirmed with a certificate of title showing that ownership of the animal has been transferred. This concept has been incorporated into § 4760.2(m).

The second sentence of § 4740.3–3, which addresses the disposal of carcasses, has been deleted because its intent is provided for under the prohibited acts of § 4760.2(e) which states, in part, that no consideration can be received for the remains of a wild free-roaming horse or burro that has not lost its status as such.

Many comments wanted to know how a processing plant could establish that a carcass bearing a Bureau of Land Management brand had passed to private ownership. An explanation of this process has been incorporated into the provision of § 4760.2(m) which requires that a carcass be accompanied by a certificate of title to the animal.

Relocation on Public Lands

Concern was expressed that it is too restrictive to limit the relocation of wild free-roaming horses and burros to the public lands they were using as of December 15, 1971. Section 9 of the Act is quite clear on the point that the Secretary shall not relocate animals to areas where they did not exist when the Act was passed.

Custodial Arrangements

Concern was expressed that staffing will be inadequate to administer the

custodial arrangements regulations. Regulations establish programs, but do not determine personnel requirements or ceilings. It is expected that the programs established by these regulations will be adequately funded through the normal budgeting process.

Considerable concern was expressed about the number of wild free-roaming horses and burros that could be adopted in any one year and particularly as it applied to families. After careful consideration of these concerns, it has been decided not to limit by regulation the number of animals a family may adopt. The possibility of incorporating such a provision into the regulations will be reconsidered if experience shows that a uniform policy established by regulations is necessary or desirable.

There was an obvious uneasiness among the comments with regard to the adoption of more than four animals per year as provided in § 4740.3–2(c). There were also numerous suggested actions for the authorized officer to follow to assure that these animals would receive humane treatment and not be commercially exploited or sold by adopters. That an authorized officer is required to justify these additional adoptions in writing should, in itself, provide assurance of humane treatment and protection. Detailed instructions, which tell the authorized officer how to determine who should receive additional animals, are more appropriate for inclusion in the Bureau of Land Management Manual. Furthermore, an adopter cannot gain title to more than four animals in any one year regardless of the total number adopted. This limitation should provide further assurance that selling so few animals for conversion to commercial products would limit the potential for making this a business operation.

It was suggested that the Bureau of Land Management make systematic inspections of all adopted animals as a means of carrying out the intent of § 4740.4–2(e). The logistics involved in such an endeavor would make this next to impossible. However, there will be inspections of adopted animals whenever possible.

There was a question as to what an authorized officer would do with an animal that was repossessed under the provisions of § 4740.4–2(e). In such a situation, the authorized officer would determine whether or not the animal could be returned to the public lands and if not, the provisions under § 4740.3(a), which provide for the disposition of excess animals, would be followed.

As a result of many comments received regarding § 4740.4–2(f), which explains what to do when an adopted animal dies, the paragraph has been changed to provide that, within seven days of death, the transferee shall furnish the authorized officer with a veterinarian's written statement of the apparent cause of death.

Granting of Title

There were some questions as to whether or not the requirements of § 4740.5 (granting of title) would apply to horses that were adopted prior to the effective date of these regulations. The regulations have been amended to show that they apply to all animals adopted after December 15, 1971.

The comments suggested that, in addition to licensed veterinarians, others be authorized to write the statement required for the granting of title in § 4740.5(b). Limiting this authority to licensed veterinarians appears to be the best way to assure equal treatment of all adopters of wild free-roaming horses and burros.

There was a suggestion that when title passes, the Bureau of Land Management brand the animal to signify the change of ownership. This would be impractical because the animals are so widely distributed geographically. Giving the adopter a certificate of title is a sufficient and more practical way of providing proof of ownership.

Concern was expressed that title could be passed to persons with prior records of animal abuse, death or "loss." If there is abuse, the authorized officer can recover an animal under the provisions of § 4740.4–2(e), and additionally it is required in § 4740.5(b) that an application for title be accompanied by a veterinarian's written statement that the animal has been humanely treated in the year prior to application. Furthermore, when an animal dies, § 4740.4–2(f) now requires that an adopter furnish the authorized officer with a veterinarian's written statement of the apparent cause of death. As regards the loss of animals, there will be a record search by the Bureau of Land Management to determine if there is evidence of prior unaccountable losses.

Prohibited Acts

Section 4760.2(e) has been changed so that it now prohibits the sale of a wild free-roaming horse or burro or its remains unless it has lost its status as such.

As a result of a suggestion from one comment, the word "allows" in § 4760.2(g) has been replaced with "is responsible for."

The words "in a rodeo or similar contest" have been removed from the prohibited acts in § 4760.2(h) because wild free-roaming horses or burros could possibly be used for bucking stock in other, less formal, situations.

It has been suggested that adopters be required to produce an animal for inspection at any time rather than after receipt of a written notice as required in § 4760.2(i). This suggestion has not been adopted because there are too many circumstances under which it would be unreasonable.

There were suggestions that § 4760.2(i), as written in the proposed rulemaking, be changed so that the 14-day notice of death requirement be reduced to seven days. This has been accomplished by removing the requirement from § 4760.2(i) and inserting a newly written § 4760.2(j) which contains a seven-day requirement.

Section 4760.2(k) has been changed, in part, to read "* * * official mark * * *" instead of "* * * official freeze mark * * *" because the Bureau of Land Management has used other marking systems in the past and possibly could change in the future.

Section 4760.2(m) has been added to the prohibited acts to assure that a conscientious effort has been made to capture escaped wild free-roaming horses or burros.

Section 4760.2(n) has been added as a prohibited act in order to prevent the acceptance of a Bureau of Land Management-marked horse or burro without a certificate providing evidence that title to the animal has been transferred.

Section 4760.2(o) has also been added as a prohibited act to require a one-year retention of the title to a Bureau of Land Management-marked animal that has been accepted for slaughter or destruction.

Editorial and clarification changes in the proposed regulations have been made as needed.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Act of December 15, 1971, as amended, (16 U.S.C. 1331 et seq.) commonly referred to as the Wild Free-Roaming Horse and Burro Act, Part 4700, Subchapter D, Chapter 2, Title 43 of the Code of Federal Regulations is amended as set forth below.

December 18, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

1. Section 4700.0–5 is amended to revise subsection (d) and to add five

new subsections (n), (o), (p), (q), and (r) as follows:

§ 4700.0-5 Definitions.

* * * * *

(d) "Excess animals" means wild free-roaming horses or burros (1) which have been removed from an area by the authorized officer pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.

* * * * *

(n) "Commercial exploitation" means using a wild free-roaming horse or burro, because of its characteristics of wildness, for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Uses such as saddle or pack stock or other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(o) "Inhumane treatment" means causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or allowing an animal to suffer from a lack of necessary food, water or shelter; using any equipment, apparatus, or technique during transportation, domestication or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

(p) "Old" means a wild free-roaming horse or burro characterized by its inability to fend for itself because of age, physical deterioration, suffering or closeness to death.

(q) "Sick" means a wild free-roaming horse or burro with failing health, infirmness or disease from which there is little chance of recovery.

(r) "Lame" means a wild free-roaming horse or burro with malfunctioning muscles, ligaments or limbs that impair its freedom of movement.

2. Section 4700.0-6 is amended by adding new paragraphs (c) and (d) as follows:

§ 4700.0-6 Policy.

* * * * *

(c) Wild free-roaming horses and burros where found on public lands shall be considered comparably with other resource values in the development of resource management plans under the Bureau's planning system including allocation of appropriate portions of the available forage.

(d) Where wild free-roaming horses and burros use, as part of their habitat, public lands administered by the Bureau of Land Management and lands in the National Forest system, the Bureau of Land Management shall cooperate to the fullest extent with the Forest Service in the management of these animals.

3. Section 4730.1 is revised to read as follows:

§ 4730.1 Inventory and planning.

(a) A current inventory of wild free-roaming horses and burros shall be maintained by the authorized officer for each area where a herd exists for the purpose of evaluating population dynamics including whether and where excess animals exist as a basis for making management decisions. Such inventory will be designed to estimate animal numbers, productivity, sex ratio and age structure for each herd.

(b) In planning for management, protection, and control of wild free-roaming horses and burros, including determination of desirable numbers and other management requirements of these regulations, the authorized officer will utilize the Bureau's multiple use planning system.

(c) Using the information developed from inventory data and planning the authorized officer shall determine—

(1) Appropriate protection and management for wild free-roaming horses and burros on the management areas under consideration; and

(2) The appropriate actions needed to achieve proper population levels.

(d) In making these determinations, the authorized officer shall consult with the U.S. Fish and Wildlife Service, State wildlife agencies, individuals independent of Federal or State government recommended by the National Academy of Sciences, and any other individuals who he determines have scientific expertise or special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

4. Subpart 4740 is revised in its entirety to read as follows:

Subpart 4740—Removal and Relocation of Excess or Problem Animals

Sec.

4740.1 Capture.
4740.2 Humane use of helicopters and motor vehicles.
4740.3 Removal.
4740.3-1 Acts of mercy.
4740.3-2 Loss of status.
4740.3-3 Disposal of carcasses.
4740.4 Relocation.
4740.4-1 Relocation on public lands.
4740.4-2 Custodial arrangements.
4740.5 Granting of title.

Subpart 4740—Removal and Relocation of Excess or Problem Animals

§ 4740.1 Capture.

Under the supervision of the authorized officer, where it has been determined necessary, wild free-roaming horses and burros may be captured, corralled and held in a humane manner. All excess or problem animals will be held under humane conditions pending disposal under the provisions of this Subpart.

§ 4740.2 Humane use of helicopters and motor vehicles.

(a) The use of helicopters is authorized to locate the animals involved and for related purposes such as to transport personnel and equipment. The condition of the animals shall be continuously observed by the authorized officer and should signs of unnecessary stress be noted, the source of stress shall be removed so as to allow for recovery. Helicopters may be used in roundups or other capture operations subject to the following humane procedures:

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) The rate of movement shall not exceed limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of animals.

(3) The helicopter shall be used to enable the authorized officer to look for the presence of dangerous areas and move the animals away from hazards during the capture operation.

(4) During capture operations, animals shall be moved in such a way as to prevent unnecessary stress or injury.

(b) Motor vehicles may be used for the purposes of transporting captured animals, subject to the following humane procedures:

(1) All such transportation shall be in compliance with appropriate State and Federal laws and regulations applicable to the humane transportation of horses and burros.

(2) Vehicles shall be in good repair, of adequate rated capacity, and carefully operated so as to insure that captured animals are transported without undue risk of injury.

(3) Vehicles shall be inspected and approved by an authorized officer prior to use.

(4) Where necessary and practical, animals shall be sorted as to age, size, temperament, sex, and condition when transporting them so as to minimize, to the extent possible, injury due to fighting and trampling.

(5) The authorized officer shall consider the condition of the animals, weather conditions, type of vehicles, and distance to be transported when planning for the movement of captured animals.

(c) The transportation of wild free-roaming horses and burros shall be under humane conditions. Unless otherwise approved by the authorized officer, transportation shall be limited, in sequence, to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

§ 4740.3 Removal.

(a) The authorized officer, after making a determination that there are excess animals in an area shall immediately take action to remove those animals from the public lands. Such action shall be taken in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with overpopulation:

(1) Old, sick, or lame animals shall be destroyed in the most humane manner possible. If there are equally humane methods, the most cost efficient may be selected.

(2) Any additional excess animals shall be humanely captured and removed for maintenance and care for which the authorized officer determines an adoption demand exists by qualified persons, organizations, or agencies and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling).

(3) Additional excess animals for which an adoption demand by qualified individuals does not exist shall be destroyed in the most humane manner possible. If there are equally humane methods, the most cost efficient may be selected.

(b) Where the authorized officer finds it necessary to remove excess animals from areas of the public lands, and he determines that it is not practical to relocate them on public lands or capture and remove them for maintenance, he may destroy such animals in the most humane manner possible. No person, except the authorized officer or his authorized representative, shall destroy wild free-roaming horses and burros.

(c) The authorized officer, after making a determination that there are problem animals in an area and that action is required, shall humanely remove the animals and may dispose of them in the same manner as excess animals including the relocation or return to the public lands.

§ 4740.3-1 Acts of mercy.

Any severely injured or seriously sick animals will be destroyed in the most humane manner possible as an act of mercy.

§ 4740.3-2 Loss of status.

Wild free-roaming horses and borros or their remains shall lose their status as such—

(a) Upon passage of title under § 4740.5 of this part;

(b) If they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes before passage of title;

(c) Upon destruction by the authorized officer or his designee pursuant to section 3(b) of the Act;

(d) If they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 4 of the Act and disposal is authorized by the authorized officer or his designee; or

(e) Upon destruction or death for purposes of or incident to the program authorized in section 3 of the Act.

§ 4740.3-3 Disposal of carcasses.

Carcasses of animals that have lost their status as wild free-roaming horses and burros may be disposed of in any customary manner. However, no consideration of any kind shall be received by any person who transfers the remains of a wild free-roaming horse or burro, that has not lost its status as such, to a rendering plant or other facility for disposal.

§ 4740.4 Relocation.

Wild free-roaming horses and burros may be relocated when: (1) The authorized officer determines there are excess animals in an area; (2) They have been removed from private lands under § 4750.3 of this title; (3) They are problem animals; or (4) the authorized officer determines that proper resource and herd management requires such action.

§ 4740.4-1 Relocation on public lands.

(a) Wild free-roaming horses and burros shall not be introduced by relocation to areas of public land that were not being used by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) Before wild free-roaming horses and burros are relocated to a different area of the public lands a written determination shall be made by the authorized officer that the action meets the requirements of the Bureau of Land Management's resource management plans and that the area has an adequate allocation of forage for the animals relocated.

§ 4740.4-2 Custodial arrangements.

(a) The authorized officer may transfer for private maintenance or adoption up to 4 wild free-roaming horses or burros per year to any qualified person, organization, or government agency.

(b) Wild free-roaming horses and burros shall be transferred only to an applicant of a legal age in the State in which the applicant resides.

(c) Notwithstanding the provision of subsection (a) hereof, more than four animals per year may be transferred to any qualified person, organization, or agency for adoption if the authorized officer determines in writing that the applicant is capable of humanely transporting and caring for the additional animals.

(d) Before wild free-roaming horses and burros are transferred, the applicant shall sign a cooperative agreement that incorporates provisions for custodial maintenance including but not limited to provisions for proper maintenance of the animals and protection from inhumane treatment and commercial exploitation.

(e) If the authorized officer determines that an adopted wild free-roaming horse or burro is being commercially exploited, inhumanely treated, or treated in a manner that violates a provision of the cooperative agreement, he may take immediate possession of the animal.

(f) If a wild free-roaming horse or burro that has been transferred for private maintenance or adoption dies, the transferee shall, within 7 days of the death, furnish the authorized officer with a veterinarian's written statement of the apparent cause of death.

(g) Persons, organizations, or agencies who receive wild free-roaming horses or burros that have been previously transferred for private maintenance or adoption shall be subject to all the provisions of these regulations. No wild free-roaming horse or burro shall be transferred without the approval of the authorized officer.

(h) At the request of the transferee, the authorized officer may transfer custody of wild free-roaming horses and burros to another qualified applicant.

§ 4740.5 Granting of title.

(a) The authorized officer may grant title to not more than four wild free-roaming horses and burros in any one year upon application of any qualified person, organization, or agency to whom these animals have been transferred for adoption. Applicants for granting of title

must be of legal age in the State in which they reside.

(b) Persons, organizations, or agencies who have provided humane conditions, treatment, and care for the animals they have adopted after December 15, 1971, for at least one year under a cooperative agreement with the Bureau of Land Management are qualified to apply for title to the animals. The application for a title shall include a written statement of a licensed veterinarian attesting to the best of his knowledge that the animals have been given humane treatment and care preceding the filing of the application.

(c) The application for title shall be on a form prescribed by the Director, Bureau of Land Management, and shall be filed at the office specified on the form.

5. Section 4760.2 is amended by revising paragraph (e); redesignating paragraph (f) as paragraph (p) and by adding paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) to read as follows:

§ 4760.2 Prohibited acts.

* * * * *

(e) Sells, directly or indirectly, a wild free-roaming horse or burro, or the remains thereof which have not lost their status as a wild free-roaming horse or burro, or

(f) Uses a wild free-roaming horse or burro for commercial exploitation, or

(g) Causes or is responsible for the inhumane treatment of a wild free-roaming horse or burro, or

(h) Uses a wild free-roaming horse or burro for bucking stock, or

(i) Fails, upon written notice, to produce for inspection by an authorized officer those animals assigned to him for private maintenance under a cooperative agreement, or

(j) Fails to notify the authorized officer of the death of a wild free-roaming horse or burro within 7 days of death pursuant to § 4740.4–2(f) of this title, or

(k) Removes or attempts to remove, alters or destroys any official mark identifying a wild horse or burro, or its remains, or

(l) Being the assignee of a wild free-roaming horse or burro, or having charge or custody of the animal, abandons the animal without making arrangements for necessary food, water and shelter, or

(m) Being the assignee of a wild free-roaming horse or burro, or having charge or custody of the animal, fails to diligently pursue in an attempt to capture the escaped animal, or

(n) Accepts for slaughter or destruction a horse or burro bearing an official Bureau of Land Management identification mark, and which is not accompanied by a certificate that title to the animal has been transferred, or

(o) After acceptance of an animal for slaughter or destruction, fails to retain for one year the certificate of title to a horse or burro bearing an official Bureau of Land Management identification mark, or

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Federal Register

Friday
December 28, 1979

Part III

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act; Designation as a Prime Sponsor; Invitation To Submit Preapplications

DEPARTMENT OF LABOR

Employment and Training Administration

Designation as a Prime Sponsor Under the Comprehensive Employment and Training Act; Invitation To Submit Preapplications

The purpose of this notice is to describe the eligibility criteria for prime sponsor designation under the Comprehensive Employment and Training Act (CETA) and the procedures for applying for such designation. The Secretary of Labor provides financial assistance under CETA to qualified prime sponsors for the conduct of employment and training programs. Each year applicants for prime sponsor designation, including those that have been designated as prime sponsors in previous years, must submit a preapplication for Federal assistance. One such preapplication will suffice for all titles of CETA, except that the preapplication for Special Grants to Governors must be separate.

The primary basis upon which a unit of general local government may qualify as a prime sponsor under Section 101(a)(2) of CETA is having a population of 100,000 or more. Accordingly, Attachment 1, entitled "List A," of this notice lists jurisdictions with a population of 100,000 or more, based upon the most satisfactory current data available to the Secretary. If any jurisdiction previously having a population of 100,000 or more falls below 100,000 it may still apply, provided it meets the requirements under Section 101(a)(6). This latter group is called "List B," Attachment 2. On or about April 1, 1980, the Secretary will publish a notice of those jurisdictions newly exceeding 100,000 in population, newly under 100,000 in population, and those now in "List B" which will exceed 100,000. The publication of these lists is not intended in any manner to preclude other applicants from applying.

Eligibility Criteria. Section 101(a) of the Act provides that a prime sponsor shall be:

(a) A State;

(b) A unit of a general local government which has a population of 100,000 or more;

(c) Any consortium of units of general local government which includes a unit of general local government qualifying under paragraph (b) of this section;

(d) The four existing Concentrated Employment Program (CEP) prime sponsors.

(e) Any unit of general local government previously designated as a prime sponsor, with a population below 100,000 persons, which the Secretary certifies has demonstrated its effectiveness in, and continues to have the capability for, adequately carrying out programs under the Act.

(f) Any unit of general local government or any consortium of such units, without regard to population, which is determined by the Secretary

(1)(i) to serve a substantial portion of a functioning labor market area, or

(ii) to be a rural area having a high level of unemployment; and

(2) to have demonstrated that

(i) it has the capability for adequately carrying out programs under the Act,

(ii) there is a special need for services within the area to be served, and

(iii) it will carry out programs and services in the area as effectively as any larger unit of general local government in the jurisdiction of which it is located or as the State.

General Procedures for Applying. In accordance with Section 101(c) of the Act, and in order to be considered eligible for prime sponsorship, the Secretary of labor hereby informs all potential applicants that they must submit a preapplication for Federal assistance no later than February 15, 1980. The Department of Labor will not accept any changes in these applications subsequent to February 15, 1980, except in those cases involving the newly eligible jurisdictions which will be published in the Federal Register on or about April 1, 1980.

The preapplication must be submitted to the appropriate Regional Administrator, Employment and Training Administration (ETA), the Governor, and appropriate State and areawide clearinghouses pursuant to OMB Circular A-95, not later than 30 days prior to the completed Comprehensive Employment and Training Plan to the clearinghouse for formal review.

The preapplication will consist of Standard Form (SF) 424, as described in 41 CFR 29-70, with an attachment giving the following information:

(a) Population of area(s) to be served;

(b) Certification that the prime sponsor applicant, except for States, CEP and consortia prime sponsor applicants, has the general government authority required by the definition of "unit of general local government" at Section 3(29) of CETA;

(c) Name of any ineligible unit of general local government, located within the prime sponsor applicant's jurisdiction, that has informed the prime sponsor applicant that it will not be participating in the prime sponsor applicant's plan;

(d) Certification that the development of the applicant's plan will be in accordance with the requirements of the Act and regulations;

(e) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each applicant. For a newly formed consortium, and for a consortium in which one or more members have joined or withdrawn, the signature of the chief elected official or chief executive officer of each consortium member is required. In the case of an established consortium with no membership changes, the preapplication may, with the consent of all consortium members, be signed by the consortium's chief executive officer.

Special Application Procedures

(a) *Units of general local government of less than 100,000 population.* Any unit of general local government which does not have a population of 100,000 but wishes to be named a prime sponsor because of exceptional circumstances under the provisions of Section 101 of the Act should submit a preapplication according to procedures set forth above. In addition, the preapplication should include information as to:

(1) The laor market area(s) in which the unit of general local government is located;

(2) The proportion of the labor market area population which resides within the jurisdiction of the unit of general local government;

(3) The unit of general local government's administrative and organizational capability for adequately carrying out programs under the Act;

(4) The unit of general local government's ability to carry out the program as effectively as the State, e.g., past experience in operating employment and training programs, effective linkages with community-based organizations and programs, administrative efficiency in terms of costs, and of the existence and effective operation of an Operational Planning Grant;

(5) The special need for services within the area to be served, e.g., a high proportion of groups within the population such as disadvantaged youth, offenders, high school dropouts, a high unemployment rate, substantial outmigration, or unique commuting problems. The problems faced by prime sponsors in dealing with these special needs for services should be different from the problems faced by other prime sponsors in similar geographic areas.

(b) *Consortia.* Combination of units of general local government may form a

consortium to plan and operate a comprehensive employment and training program. The nature of consortium agreements is set forth in detail in Section 676.4 of the CETA regulations, published at 20 CFR Parts 675 through 680.

In order to encourage the formation of consortia that comprise at least 75 percent of labor market areas, the Secretary will use up to 5 percent of the funds available for Title II, Parts A, B and C, of the Act to provide additional funding for such consortia.

Consortia which do not serve such areas shall not be eligible for these additional funds. Prior to making decisions concerning these funds, the Regional Administrator, ETA, will consult with the Governors of the appropriate States and afford them an opportunity to make recommendations.

A consortium must submit a preapplication according to the procedures set forth above. In addition, each consortium shall submit a consortium agreement to the appropriate Regional Administrator, ETA, by March 3, 1980. (See 20 CFR 676.4.) An established consortium which submitted a formal written agreement last year may attest in writing that the agreement is the same or specify amendments to the agreement. The formal agreement or attestation must be signed by the chief elected official or chief executive officer of each consortium member. Only one such agreement is necessary for designation under all titles.

List of ETA Regional Offices. All preapplication information and consortium agreements (described above) must be submitted to the appropriate Regional Administrator, ETA. The names, addresses and areas of responsibility of the Regional Administrators are listed on Attachment No. 3.

Implementation Schedule

Grants to prime sponsors for Fiscal Year 1981 will be executed by October 1, 1980. Planning estimates will be released by May 15, 1980. Prime sponsors will be expected to submit their final grant applications to the appropriate Regional Administrator by August 15, 1980.

List A—Eligible Under Section 101(a)(1) and (2)

Listing of Jurisdictions of 100,000 or More Population (Based on the most satisfactory current data available to the Secretary)

Alabama

Birmingham	Jefferson County
Huntsville	Mobile County
Mobile	Tuscaloosa County
Montgomery	Balance Alabama
Calhoun County	

Alaska

Municipality of Anchorage	Balance Alaska

Arizona

Phoenix	Maricopa County
Tucson	Balance Arizona
Mesa	

Arkansas

Little Rock	Balance Arkansas
Pulaski County	

California

Anaheim	San Francisco City/ County
Berkeley	San Jose
Fremont	Santa Ana
Fresno	Stockton
Garden Grove	Sunnyvale
Glendale	Torrance
Huntington Beach	Alameda County
Long Beach	Butte County
Los Angeles	Contra Costa County
Oakland	Fresno County
Pasadena	Humboldt County
Riverside	Kern County
Sacramento	Los Angeles County
San Bernardino	Marin County
San Diego	Merced County
Monterey County	Santa Barbara County
Orange County	Santa Clara County
Placer County	Santa Cruz County
Riverside County	Solano County
Sacremento County	Sonoma County
San Bernardino County	Stanislaus County
San Diego County	Tulare County
San Joaquin County	Ventura County
San Luis Obispo County	Yolo County
San Mateo County	Balance California

Colorado

Aurora	Arapahoe County
Colorado Springs	Boulder County
Denver City/County	El Paso County
Lakewood	Jefferson County
Pueblo	Larimer County
Adams County	Weld County
	Balance Colorado

Connecticut

Bridgeport	Stamford City
Hartford City	Waterbury City
New Haven City	Balance Connecticut

Delaware

New Castle County	Balance Delaware

District of Columbia

Florida

Ft. Lauderdale	Hillsborough County
Hialeah	Marion County
Hollywood	Lee County
Jacksonville City/ Duval County	Leon County
	Manatee County
Miami	Okaloosa County
Orlando	Orange County
St. Petersburg	Palm Beach County
Tampa	Pasco County
Alachua County	Pinellas County
Brevard County	Polk County
Broward County	Sarasota County
Dade County	Seminole County
Escambia County	Volusia County
	Balance Florida

Georgia

Atlanta	Cobb County
Columbia City/ Muscogee County	DeKalb County
	Fulton County
Macon	Gwinnett County
Savannah	Richmond County
Clayton County	Balance Georigia

Hawaii

Honolulu City/ Honolulu County	Balance Hawaii

Idaho

Boise	Balance Idaho

Illinois

Chicago	LaSalle County
Peoria	Lake County
Rockford	Macon County
Champaign County	Madison County
Cook County	McHenry County
DuPage County	McLean County
Kane County	Rock Island County
Sangamon County	Will County
St. Clair County	Balance Illinois
Tazewell County	

Indiana

Evansville	Indianapolis City/ Marion County
Ft. Wayne	
Gary	Porter County
Hammond	South Bend
Allen County	St. Joseph County
Delaware County	Madison County
Elkhart County	Trippecanoe County
LaPorte County	Vigo County
Lake County	Balance Indiana

Iowa

Cedar Rapids	Davenport
Des Moines	Woodbury County
Black Hawk County	Balance Iowa

Kansas

Kansas City	Johnson County
Topeka	Balance Kansas
Wichita	

Kentucky

Lexington City/ Fayette County	Jefferson County
	Kenton County
Louisville	Balance Kentucky

Louisiana

Baton Rouge/ E. Baton Rouge Parish	Jefferson Parish
	Lafayette Parish
New Orleans City/Parish	Ouachita Parish
Shreveport	Rapides Parish
Calcasieu Parish	Balance Louisiana

Maine

Cumberland County	Penobscot County
Kennebec County	York County
	Balance Maine

Maryland

Baltimore	Howard County
Anne Arundel County	Montgomery County
Baltimore County	Prince Georges County
Frederick County	Washington County
Hartford County	Balance Maryland

Massachusetts

Boston City	Springfield
Worcester	Balance Massachusetts

Michigan

Ann Arbor	Kalamazoo County
Detroit	Kent County
Flint	Macomb County
Grand Rapids	Monroe County
Lansing	Muskegon County
Livonia	Oakland County
Warren	Ottawa County
Bay County	Saginaw County
Berrien County	St. Clair County
Calhoun County	Washtenaw County
Genesee County	Wayne County
Ingham County	Balance Michigan
Jackson County	

Minnesota

Minneapolis	Ramsey County
St. Paul	St. Louis County
Anoka County	Sterns County
Dakota County	Washington County
Hennepin County	Balance Minnesota

Mississippi

Jackson	Jackson County
Harrison County	Balance Mississippi

Missouri

Independence City	Jefferson County
Kansas City	St. Charles County
Springfield City	St. Louis County
St. Louis City	Balance Missouri
Jackson County	

Montana

Yellowstone County	Balance Montana

Nebraska

Lincoln City	Balance Nebraska
Omaha City	

Nevada

Las Vegas City	Washoe County
Clark County	Balance Nevada

New Hampshire

Hillsborough County	Balance New Hampshire
Rockingham County	

New Jersey

Elizabeth City	Hudson County
Jersey City	Mercer County
Newark City	Middlessex County
Paterson City	Monmouth County
Atlantic County	Morris County
Bergen County	Ocean County
Burlington County	Passaic County
Camden County	Somerset County
Cumberland County	Sussex County
Essex County	Union County
Gloucester County	Balance New Jersey

New Mexico

Albuquerque City	Balance New Mexico

New York

Albany City	Chautauqua County
Buffalo City	Chemung County
New York City	Dutchess County
Rochester City	Erie County
Syracuse City	Monroe County
Town of Amherst	Niagara County
Town of Cheektowaga	Oneida County
Younkers City	Onondaga County
Town of Babylon	Orange County
Town of Brookhaven	Oswego County
Town of Huntington	Rensselaer County
Town of Islip	Rockland County
Town of Smithtown	Saratoga County
Town of Hempstead	Schenectady County
North Hempstead Township	St. Lawrence County
Oyster Bay Township	Steuben County
Albany County	Ulster County
Broome County	Westchester County
	Balance New York

North Carolina

Charlotte City	Cumberland County
Greensboro	Gaston County
Davidson County	Guilford County
Durham City	Onslow County
Raleigh City	Wake County
Winston-Salem City	Balance North Carolina
Buncombe County	

North Dakota

Ohio

Akron City	Green County
Cincinnati City	Hamilton County
Cleveland City	Lake County
Columbus City	Licking County
Dayton City	Lorain County
Parma City	Lucas County
Toledo City	Medina County
Youngstown City	Mahoning County
Allen County	Montgomery County
Butler County	Portage County
Clark County	Richland County
Clermont County	Stark County
Columbiana County	Summitt County
Cuyahoga County	Trumball County
Franklin County	Wood County
	Balance Ohio

Oklahoma

Oklahoma City	Comanche County
Tulsa City	Oklahoma County
	Balance Oklahoma

Oregon

Portland City	Marion County
Clackamas County	Multnomah County
Jackson County	Washington County
Lane County	Balance Oregon

Pennsylvania

Allentown City	Fayette County
Erie City	Franklin County
Philadelphia City/County	Lackawanna County
Pittsburgh City	Lancaster County
Allegheny County	Lawrence County
Beaver County	Lebanon County
Berks County	Lehigh County
Blair County	Luzerene County
Bucks County	Lycoming County
Butler County	Mercer County
Cambria County	Montgomery County
Centre County	Northampton County
Chester County	Schuylkill County
Cumberland County	Washington County
Dauphin County	Westmoreland County
Delaware County	York County
Erie County	Balance Pennsylvania
Fayette County	

Puerto Rico

Bayamon Municipio	Ponce Municipio
Caguas Municipio	San Juan Municipio
Carolina Municipio	Balance Puerto Rico
Mayaguez Municipio	

Rhode Island

Providence City	Balance Rhode Island

South Carolina

Columbia City	Lexington County
Anderson County	Richland County
Charleston County	Spartanburg County
Florence County	Balance South Carolina
Greenville County	

South Dakota

Minnehaha County	Balance South Dakota

Tennessee

Chattanooga City	Hamilton County
Knoxville City	Knox County
Memphis City	Sullivan County
Nashville City/Davidson County	Balance Tennessee

Texas

Amarillo City	Bexar County
Arlington	Brazoria County
Austin City	Cameron County
Beaumont City	Dallas County
Collin County	Ector County
Corpus Christi City	Galveston County
Dallas City	Harris County
El Paso City	Hidalgo County
Fort Worth City	Jefferson County
Garland	Smith County
Houston City	Tarrant County
Irving	Taylor County
Lubbock City	Waco County
Pasadena	Wichita County
San Antonio City	Balance Texas
Bell County	

Utah

Salt Lake City	Utah County
Davis County	Weber County
Salt Lake County	Balance Utah

Vermont

Chittenden County	Balance Vermont

Virginia

Alexandria City	Virginia Beach City
Chesapeake City	Arlington County
Hampton City	Chesterfield County
Newport News City	Fairfax County
Norfolk City	Henrico County
Portsmouth City	Prince William County
Richmond City	Balance Virginia

Washington

Seattle City	Pierce County
Spokane City	Snohomish County
Tacoma City	Spokane County
Clark County	Thurston County
King County	Yakima County
Kitsap County	Balance Washington

West Virginia

Cabell County	Balance West Virginia
Kanawha County	

Wisconsin

Madison City	Outagamie County
Milwaukee City	Racine County
Brown County	Rock County
Dane County	Sheboygan County
Kenosha County	Waukesha County
Marathon County	Winnebago County
Milwaukee County	Balance Wisconsin

Wyoming

Virgin Islands

American Samoa

Guam

Northern Marianas

Trust Territory of the Pacific Islands

Note: Any jurisdiction whose name does not appear on this list which has Bureau of Census certified documentation to support the fact that its population has increased to 100,000 should submit such documentation, along with a preapplication, acording to the procedures contained herein.

List B—Eligible Under Section 101(a)(6)

Listings of Jurisdictions Which Previously Exceeded 100,000 or More in Population (Based on the most satisfactory current data available to the Secretary)

Region I—Cambridge City, Massachusetts, Fall River, Massachusetts, New Bedford, Massachusetts.

Region II—City of Camden, New Jersey, City of Trenton, New Jersey, Town of Tonawanda, New York.

Region III—City of Scranton, Pennsylvania, Northumberland County, Pennsylvania, Roanoke City, Virginia.

Region V—Dearborn, Michigan, Duluth, Minnesota, Canton, Ohio, Ashtabula, Ohio.
Region VI—Cleveland County, Oklahoma.

Regional Administrators Employment and Training Administration

Location, and States in Region

Region I, Boston

Timothy M. Barnicle, Regional Administrator, ETA, U.S. Department of Labor, J. F. Kennedy Building, Room 1703, Boston, Massachusetts 02203—Connecticut, Maine, Massachusetts, Vermont, Rhode Island, New Hampshire.

Region II, New York

James A. Ware, Regional Administrator, ETA, U.S. Department of Labor, 1515 Broadway, Room 3713, New York, New York 10036—New York, Puerto Rico, New Jersey, Virgin Islands, Canal Zone.

Region III, Philadelphia

William J. Haltigan, Regional Administrator, ETA, U.S. Department of Labor, Post Office Box 8796, Philadelphia, Pennsylvania 19101—Delaware, Virginia, Maryland, Pennsylvania, West Virginia, District of Columbia.

Region IV, Atlanta

James A. Lowe, Acting Regional Administrator, ETA, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 405, Atlanta, Georgia 30309—Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee.

Region V, Chicago

Charles T. Ross, Regional Administrator, ETA, U.S. Department of Labor, 230 South Dearborn Street, 6th Floor, Chicago, Illinois 60604—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI, Dallas

Richard A. Flores, Jr., Regional Administrator, ETA, U.S. Department of Labor, 555 Griffin Square Building, Room 316, Dallas, Texas 75202—Arkansas, Oklahoma, Texas, Louisiana, New Mexico.

Region VII, Kansas City

Richard G. Miskimins, Regional Administrator, ETA, U.S. Department of Labor, 911 Walnut Street, Room 1000, Federal Building, Kansas City, Missouri 64106—Iowa, Missouri, Nebraska, Kansas.

Region VIII, Denver

Floyd E. Edwards, Regional Administrator, ETA, U.S. Department of Labor, 16122 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294—Colorado, Utah, South Dakota, North Dakota, Montana, Wyoming.

Region IX, San Francisco

Carolyn M. Golding, Regional Administrator, ETA, U.S. Department of Labor, Federal Office Building, Box 36084, 450 Golden Gate Avenue, San Francisco, California 94102—Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territory of the Pacific Islands.

Region X, Seattle

Don A. Balcer, Acting Regional Administrator, ETA, U.S. Department of Labor, Federal Office Building, 909 First Avenue, Room 1145, Seattle, Washington 98174—Alaska, Idaho, Oregon, Washington.

Signed at Washington, D.C., this 20th day of December 1979.

Charles B. Knapp,

Deputy Assistant Secretary for Employment and Training.

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Federal Register

Friday
December 28, 1979

Part IV

Department of Health, Education, and Welfare

National Institutes of Health

Committee on Federal Research Into the Biological Effects of Ionizing Radiation; Notice of Meeting

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Committee on Federal Research Into the Biological Effects of Ionizing Radiation; Notice of Meeting

Notice is hereby given of a public meeting on a projected federal radiation research agenda, sponsored by the Committee on Federal Research Into the Biological Effects of Ionizing Radiation, March 10 and 11, 1980. On each day the meeting will run from 9:00 a.m. until adjournment, and be convened at the National Institutes of Health, Clinical Center (Building 10), Masur Auditorium, Bethesda, Maryland 20205.

This meeting is being held to discuss solicited "Science Projection Papers" prepared by experts in the various disciplines of radiation biology.

In addition, the Committee has solicited authors to address in writing a series of broader subjects related to radiation research and issues of public concern. These communications will be summarized by the authors at the public meeting. Following is a list of these broad questions.

1. What knowledge is considered certain regarding human somatic effects of ionizing radiation?

2. What knowledge is considered certain regarding human genetic effects of ionizing radiation?

3. What are the limits of extrapolation in applying results from experimental radiation studies on cellular and animal systems to human populations?

4. What are the opportunities and limits in applying epidemiological methods to determine the effects of ionizing radiation on humans?

5. What is our current knowledge about the effects of differences in schedules of delivery of a given dose of ionizing radiation (dose rate, fractionation) and "quality" of radiation (LET) on biological systems and how can this information be used to predict the effects of low doses of radiation in man?

6. What is our current knowledge from animal and cellular systems about the combined effects of ionizing radiation and exposure to other agents (chemical, pharmacologic, physical, viral etc.) and is this knowledge adequate to predict human responses?

7. What is the state of knowledge about differences in response to ionizing radiation as a result of biological factors such as age, sex, and genetically determined variations?

8. What kinds of information must be developed to foster enlightened public discussion on control of man-made ionizing radiation? How and by whom should such information be made accessible to the public? What end points or criteria, such as shortening of life, developing disease etc. are useful to provide perspective for public understanding of radiation risks?

9. What is the potential for significant human exposure to internal radiation from environmentally dispersed radionuclides and what research is needed to reduce the effects of such exposure?

10. What are the legal, ethical, and economic constraints to developing a comprehensive knowledge of the biological effects of ionizing radiation?

11. How does man-made ionizing radiation contribute to the welfare of mankind?

Members of the public are invited to forward written comments on these questions. Any submissions received before February 1, 1980 will be printed along with the manuscripts by invited authors.

Copies of all printed material will be available after February 20, 1980, and may be obtained from:

Office of Communication, National Institutes of Health, Bethesda, Maryland 20205, Tel: (301) 496-4461.

This same material will be available on March 10 and 11 at the Masur Auditorium.

Attendance by the public and discussion from the floor is encouraged, limited only by space available and time constraints imposed by the agenda.

Additional information can be obtained from:

Dr. Charles U. Lowe, Special Assistant to the Director, NIH, Building 1, Room 103, Bethesda, Maryland 20205, Tel: (301) 496-3283.

Dated: December 20, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-39516 Filed 12-27-79; 8:45 am]

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Friday
December 28, 1979

Federal Register

Part V

Department of Labor

Office of Federal Contract Compliance Programs

Compliance Responsibility for Equal Employment Opportunity

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-2, 60-30

Compliance Responsibility for Equal Employment Opportunity

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The regulations published today make changes and additions to three parts of the regulations implementing Executive Order 11246, as amended. These regulations codify existing policy, procedures and practices concerning conciliation agreements. The regulations also establish a requirement that contractors file an annual Affirmative Action Program summary. The summary is being developed and will be published in the Federal Register after it has been cleared with the Office of Management and Budget. Finally, new sections to the rules of practice add an expedited hearing procedure.

EFFECTIVE DATE: January 28, 1980.

FOR FURTHER INFORMATION CONTACT: Edward E. Mitchell, Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, Washington, D.C. 20210 (202) 523-9426.

SUPPLEMENTARY INFORMATION: On March 20, 1979, the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, published in the Federal Register (44 FR 17136) a proposal to amend 41 CFR Parts 60-1, 60-2 and 60-30. The proposal set forth current policy, procedures and practices followed by OFCCP concerning conciliation agreements, a proposed annual Affirmative Action Program (AAP) summary, and expedited hearing rules. Comments were invited from the public for 30 days.

The Department of Labor received comments regarding the proposed AAP summary which suggested that the Depatment provide the public with more information about: (1) The extent of the information to be required in the AAP summary, (2) The need for and use to which the summary will be put, and (3) Alternative sources of the information to be collected in the AAP summary. In addition, some comments suggested that the public comment period for the proposed AAP summary be extended from 30 to 60 days.

On April 17, 1979, OFCCP published in the Federal Register (44 FR 22761) a further explanation of the proposed AAP summary, and extended the comment period for that proposal, alone, for an additional 30 days. Comments from interested parties were received until May 21, 1979, on the AAP summary, and until April 19, 1979, on the other proposed sections.

Over 130 separate written comments were submitted by individuals and groups. During the comment period, 34 comment letters were submitted by manufacturers; 20 by other contractors; 18 by trade associations; 13 by colleges and universities; 11 by law firms and lawyers; 5 by state and Federal agencies and 25 by other organizations. Each submission and each specific criticism and suggestion has been given careful consideration.

Section 60-1.33. This section codifies existing OFCCP policy, procedures, and practices regarding the use of conciliation agreements to resolve deficiencies and/or violations. It sets forth those instances when a conciliation agreement is required, and when a letter of commitment may be used.

1. Many contractors contended that § 60-1.33's requirement that back pay must be provided, where appropriate, in a conciliation agreement goes beyond the authority of Executive Order 11246.

The proposition that Executive Order 11246 has the force and effect of law has been recognized by every Court which has considered the issue. *See, e.g., Contractor's Ass'n. of Eastern Pennsylvania* v. *Secretary of Labor,* 442 F. 2d 159 (3rd Cir. 1971); *Farkas* v. *Texas Instrument Co.,* 375 F. 2d 629 (5th Cir. 1967), *cert. denied,* 389 U.S. 977 (1967); *Farmer* v. *Philadelphia Electric Co.,* 329 F. 2d 3 (3rd Cir. 1964); *United States* v. *New Orleans Public Service, Inc.,* 553 F. 2d 459 (5th Cir. 1977) *vacated and remanded for reconsideration on another issue,* 98 S. Ct. 2841 (1978); *United States* v. *Mississippi Power Light Co.,* 553 F. 2d 480 (5th Cir. 1977) *vacated and remanded for reconsideration on another issue,* 98 S. Ct. 2841 (1978); *Legal Aid Society* v. *Brennan,* 381 F. Supp. 131 (N.D. Calif. 1974); *Southern Illinois Builders Assoc.* v. *Oglivie,* 327 F. Supp. 1154, *aff'd,* 471 F. 2d 680 (7th Cir. 1972); *Joyce* v. *McCrane,* 320 F. Supp. 1285 (D. N.J. 1970); *United States* v. *Local 189, Paper Makers,* 282 F. Supp. 39 (E.D. La. 1968), *aff'd.,* 416 F. 2d 980 (5th Cir. 1969), *cert. denied* 397 U.S. 919 (1971).

Section 201 of the Executive Order authorizes the Secretary of Labor to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes [of the Order]." Pursuant to the authorization in section 201 to adopt rules and regulations and the authorization in section 202(6) to require remedies not specifically enumerated in the Executive Order, the Secretary issued formal regulations on December 4, 1971, which required that remedial relief be provided to members of an "affected class" as part of a Government contractor's obligations under the Executive Order (41 CFR 60-2.1). The codification of the words "including back pay" into the regulations (41 CFR 60-2.1(b) and 41 CFR 60-1.26) in 1977 (42 FR 3461, January 18, 1977), merely clarified the long-standing OFCCP policy and practice of obtaining back pay in appropriate cases. Back pay relief has been obtained under the Executive Order since at least 1967, and between 1969 and 1979, OFCCP entered into hundreds of back pay agreements involving well over $61,000,000.

Section 202(1) of the Executive Order requires nondiscrimination in employment towards individual applicants and employees and it also requires affirmative action to correct the effects of past discrimination. The Order also provides that a contractor may be debarred if it discriminates in employment (202(6), 209(a)(6)), and have its contracts cancelled, terminated or suspended (202(6), 209(a)(5)). A debarred contractor must satisfy the Secretary of Labor that it has brought itself into compliance with the Executive Order before it can be reinstated as an eligible bidder on Government contractors. (209(a)(6)). Failure to provide back pay relief would preclude the contractor from being reinstated.

Therefore, the requirements that back pay where appropriate must be provided for in a conciliation agreement is clearly consistent with Executive Order 11246.

2. Several contractor comments contended that § 60-1.33's requirement that retroactive seniority, where appropriate, must be provided for in a conciliation agreement goes beyond the authority of Executive Order 11246. However, it has been the policy to obtain retroactive seniority under the Executive Order program since at least 1963. Moreover, the Supreme Court has upheld the recovery of retroactive seniority in some circumstances under Title VII of the Civil Rights Act of 1964, as amended. *Franks* v. *Bowman Transportation Company,* 424 U.S. 747 (1976).

Some commentators argued that the decision in *Teamsters* v. *United States,* 431 U.S. 324 (1977), in which the Court held that seniority systems which perpetuate past discrimination are not subject to attack under Title VII if they are bona fide within the meaning of

section 703(h) of Title VII, means that Congress preempted the field in enacting Title VII. Thus, they assert that a seniority system lawful under Title VII cannot be held unlawful under the Executive Order. This argument was stated in dicta in *United States* v. *East Texas Motor Freight System,* 564 F.2d 179 (C.A. 5 1977) and adopted in *United States and EEOC* v. *Trucking Management, Inc.,* USDC D.C., C.A. No. 74-453, July 17, 1979, appeal docketed, Nos. 79-2102, 79-2103 (D.C. Cir. Sept. 18, 1979). The Government does not agree with this construction and has taken an appeal from the *Trucking Management* decision. In any event, neither decision purports to outlaw all retroactive seniority. See, also, *Franks* v. *Bowman Transportation Company, supra,* 424 U.S. 747.

Section 60-1.34. This section codifies existing OFCCP policy, procedures and practices regarding the procedure to be followed when violation of a conciliation agreement or a letter of commitment is alleged.

1. The section provides a contractor 15 days to respond to an allegation that a conciliation agreement has been violated. This is sufficient time for a contractor to set forth its position. Furthermore, the 15-day period is not the only opportunity the contractor has to present its defenses. If, after the expiration of the 15-day period, the contractor has been unable to demonstrate that it has not violated its commitments, enforcement proceedings may be initiated pursuant to the expedited hearing rules in sections 60-30.31 through 60-30.37, adopted today; under existing procedures in Part 60-30; or pursuant to section 209(a)(2) of the Executive Order. In either instance, the contractor will have an opportunity to present its case before an Administrative Law Judge or before a Federal judge.

2. This section does not require issuance of a show cause notice prior to initiating enforcement proceedings for violation of a conciliation agreement. Several contractors stated that by signing a conciliation agreement they would be waiving their due process right to a show cause notice. The show cause procedure, however, is a regulatory procedure, not a procedure required by the Executive Order itself. Moreover, the current regulations do not require a show cause notice prior to the initiation of enforcement proceedings in each instance. (See, e.g., 41 CFR 60-1.26(a)(2) and 41 CFR 60-4.8.) Also, the U.S. District Court for the Northern District of California has held in *Castillo, et al.* v. *Usery, et al.* (Civil No. 73-282 AJZ), that a show cause notice is not required where an Executive Order violation has been found, the contractor has agreed to remedy the violation, and the contractor has subsequently violated its commitment.

The section affords contractors with notice of the alleged violations and an opportunity to rebut the allegations prior to the initiation of enforcement proceedings. Thus, contractors' rights are more than adequately protected.

3. Contrary to the statements in many comments, the section does not place the burden of proof on the contractor. In fact, it does not allocate the burden of proof at all. If a conciliation agreement is violated, OFCCP is required to give the contractor notice. The contractor may then demonstrate to OFCCP that it has not violated the conciliation agreement. If the contractor does not demonstrate compliance, enforcement proceedings, may be initiated during which the Department of Labor must prove the violations alleged.

4. This section also sets forth procedures to be followed when OFCCP alleges that a letter of commitment has been violated. Such a violation may be corrected by negotiating an agreement, or enforcement proceedings may be initiated.

Section 60-2.14. This section imposes a new requirement under which contractors must prepare a brief summary of their affirmative action programs and the results achieved under those programs. This summary will be based on contractors' written affirmative action plans and will be submitted to OFCCP annually and will assist OFCCP in establishing a priority compliance review selection system.

Present § 60-2.14, captioned "Compliance status" is renumbered § 60-2.15.

1. Many comments stated that OFCCP already has the information in the form of the EEO-1 report.

However, the EEO-1 report summarizes employment by nine major job categories, and contains no data on affirmative action goals, projected job opportunities or related matters. The AAP Summary would contain, as explained in the April 17, 1979, Federal Register Notice, the following types of data: Level of goals by job groups for the preceding AAP period; Level of goal achievement by job group during the preceding AAP period; Level of employment of minorities and women by job groups plus the total level of employment by job groups at the end of the preceding AAP period; Level of goals by job groups for current AAP period; Level of total employment by job groups projected for current AAP period; Hires, terminations and applications of minorities and women, by job group, for preceding AAP year; Indications of disparities (if any) in employment opportunities between minorities and women and others in the work force; and Indications of actions taken to address any such disparities.

This information is much different than the data contained in the EEO-1 report and will be of great value in targeting contractors for review. OFCCP does not require contractors, as a matter of course, to submit AAP's on an annual basis. This AAP summary will allow OFCCP to derive relevant data from contractor AAPs and, since it merely summarizes AAP content, will not impose a substantial paperwork burden on contractors. The AAP summary format is being developed, and will be published in the Federal Register after it has been cleared by the Office of Management and Budget.

2. As many of the comments point out, information contained in the AAP summary would not be protected from disclosure under the Freedom of Information Act (FOIA). Unless the information falls within one of the Act's nine exemptions [1] or is otherwise protected from disclosure, OFCCP is required to disclose it. *Chrysler Corp.* v. *Brown,* —— U.S. ——, 99 S. Ct. 1105 (1979). If the information is within an exemption, disclosure is within the discretion of the agency. *Chrysler Corp.* v. *Brown, supra.*

The fact that some or all the information contained in the AAP summary may at some point be disclosed pursuant to the FOIA does not, however, lessen the importance of the summary to the effective enforcement of Executive Order 11246.

3. The April 17, 1979, Federal Register notice stated that the data collected would be used by OFCCP to establish a priority compliance review selection system and would permit OFCCP to "concentrate its limited resources on industries and/or contractors which appear to be failing to meet Executive Order obligations." Many of the comments expressed concern that this targeting would result in a compliance review beginning with a presumption of noncompliance. But as was explained in the April 17, 1979, notice, "the information to be collected would be used for targeting purposes only; determinations of noncompliance with the Executive Order would continue to be made only upon conclusion of the compliance review procedures set forth in the remainder of 41 CFR Chapter 60."

[1] 5 U.S.C. § 552(b)(1)-(9).

Section 60–30.31. This section authorizes expedited hearings, and lists four examples of instances when such a hearing would be appropriate.

Section 60–30.32. This section sets forth the procedure for filing the Administrative Complaint and Answer in an Expedited Hearing. It is patterned after current sections 60–30.5 and 60–30.6 which deal with the Administrative Complaint and Answer, respectively, in a non-expedited hearing. A complaint under this section must, in addition to meeting the requirements of 60–30.5, state that the proceeding will be subject to the expedited hearing procedures.

As under current procedures, Section 60–30.32(c) provides that failure to request a hearing constitutes a waiver of the hearing, allowing the matter to proceed directly to a final administrative order. Only the Solicitor may file exceptions to such findings.

Section 60–30.33. This section provides for limited discovery and the exchange of witness lists in an expedited hearing. The proposal allowed only depositions, and then only by motion. Many of the comments expressed concern that by so limiting discovery, the contractor would be placed at a disadvantage. Accordingly, the section, as adopted today, provides for requests for admissions as well as depositions. This will not interrupt the accelerated timeframe of an expedited hearing since the regulations regarding admissions allow their use within the 45 days set forth for the beginning of an expedited hearing. See 41 CFR 60–30.32(d).

This section also provides for the exchange of witness lists and hearing exhibits at least 10 days prior to the hearing. Several comments urged that the time for exchange be lengthened to 20 days. That would be unworkable since that would be only 5 days after the Answer to the Complaint is due. The 10 days provides the parties sufficient time to prepare their cases in response to the exchange.

Section 60–30.34. This section provides that the Government will first have the opportunity to prove that the contractor is in violation of the Order and that the contractor will then have the opportunity to demonstrate that it is not. The section places the initial burden of proof on the Government to demonstrate a violation.

This section also provides that the Expedited Hearing will be informal. This is comparable to 41 CFR 60–30.18, which also provides that formal rules of evidence shall not apply.

Hearings conducted pursuant to § 60–30.18 have been successful and fair to both sides, and expedited hearings should be conducted in the same manner.

Section 60–30.35. This section provides that within 15 days of the conclusion of the hearing the Administrative Law Judge shall recommend findings, conclusions and a decision.

Many of the comments objected to the fact that no provision was made for filing briefs. Accordingly, a provision has been added to section 60–30.35 which allows the Administrative Law Judge to permit the parties to file post-hearing briefs, but the Administrative Law Judge's recommendations shall not be delayed by this process.

Section 60–30.36. This section provides for the filing of exceptions to the Administrative Law Judge's recommendations and for responses to the exceptions. All parties have the opportunity to file exceptions and responses.

Section 60–30.37. This section provides for a final Administrative Order to be issued by the Secretary of Labor. If the Secretary has not issued a Final Administrative Order 30 days after the expiration of time for filing exceptions, the Recommended Decision of the Administrative Law Judge shall become the final Administrative Order.

Other Comments

Many comments discussing the Expedited Hearing expressed concern about the time limits contained in the regulations.

The reason for an Expedited Hearing is to dispose of uncomplicated issues in an uncomplicated proceeding which will preserve the rights of all parties. Since only basically uncomplicated issues will be litigated under these procedures, the time limits are adequate.

In consideration of the foregoing, 41 CFR Chapter 60 is amended by adding to Part 60–1, new sections 60–1.33 and 60–1.34, by amending Part 60–2 by renumbering § 60–2.14 as 60–2.15 and by adding a new section 60–2.14; and by adding to Part 60–30, new sections 60–30.31 through 60–30.37, as set forth below.

Dated: December 21, 1979.

Ray Marshall,

Secretary of Labor.

Donald Elisburg,

Assistant Secretary, Employment Standards Administration.

Weldon Rougeau,

Director, Office of Federal Contract Compliance Programs.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. Part 60–1 is amended by adding a new § 60–1.33 to read as follows:

§ 60–1.33 Conciliation agreements.

(a) If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.

2. Part 60–1 is further amended by adding a new section 60–1.34 to read as follows:

§ 60–1.34 Violation of a conciliation agreement or letter of commitment.

(a) When a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the complaint alleges irreparable injury, enforcement proceedings may be intitiated immediately without issuing a show cause notice or proceeding through any other requirement contained in this chapter.

(b) If the contractor has violated a letter of commitment, the matter shall be handled, where appropriate, pursuant to 41 CFR 60–2.2(c) or 41 CFR 60–4.8. The violation may be corrected through a conciliation agreement, or an

enforcement proceeding may be initiated.

PART 60-2—AFFIRMATIVE ACTION PROGRAMS

3. Part 60-2 is amended by renumbering the present § 60-2.14, "§ 60-2.15," and by adding a new § 60-2.14 to read as follows:

§ 60-2.14 Program summary.

The affirmative action program shall be summarized and updated annually. The program summary shall be prepared in a format which shall be prescribed by the Director and published in the Federal Register as a notice before becoming effective. Contractors and subcontractors shall submit the program summary to OFCCP each year on the anniversary date of the affirmative action program.

PART 60-30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

4. Part 60-30 is amended by adding a new series of regulations to read as follows:

Expedited Hearing Procedures

§ 60-30.31 Expedited hearings—when appropriate.

Expedited Hearings may be used, *inter alia,* when a contractor or subcontractor has violated a conciliation agreement; has not adopted and implemented an acceptable affirmative action program; has refused to give access to or to supply records or other information as required by the equal opportunity clause; or has refused to allow an on-site compliance review to be conducted.

§ 60-30.32 Administrative complaint and answer.

(a) Expedited hearings shall be commenced by filing an administrative complaint in accordance with 41 CFR 60-30.5. The complaint shall state that the hearing is subject to these expedited hearing procedures.

(b) The answer shall be filed in accordance with 41 CFR 60-30.6 (a) and (b).

(c) Failure to request a hearing within the 20 days provided by 41 CFR 60-30.6(a) shall constitute a waiver of hearing, and all the material allegations of fact contained in the complaint shall be deemed to be admitted. If a hearing is not requested or is waived, within 25 days of the complaint's filing, the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint, and shall order the appropriate sanctions and/or penalties sought in the complaint. The Administrative Law Judge's findings and order shall constitute a final Administrative Order, unless the Office of the Solicitor, U.S. Department of Labor, files exceptions to the findings and order within 10 days of receipt thereof. If the Office of the Solicitor, U.S. Department of Labor, files exceptions, the matter shall proceed in accordance with § 60-30.36 of this Part.

(d) If a request for a hearing is received within 20 days as provided by 41 CFR 60-30.6(a), the hearing shall be convened within 45 days of receipt of the request and shall be completed within 15 days thereafter, unless more hearing time is required.

§ 60-30.33 Discovery.

(a) Any party may serve requests for admissions in accordance with § 60-30.9 (b) and (c).

(b) Witness lists and hearing exhibits will be exchanged at least 10 days in advance of the hearing.

(c) For good cause shown, and upon motion made in accordance with § 60-30.8, the Administrative Law Judge may allow the taking of depositions. Other discovery will not be permitted.

§ 60-30.34 Conduct of hearing.

(a) At the hearing, the Government shall be given an opportunity to demonstrate the basis for the request for sanctions and/or remedies, and the contractor shall be given an opportunity to show that the violation complained of did not occur and/or that good cause or good faith efforts excuse the alleged violations. Both parties shall be allowed to present evidence and argument and to cross-examine witnesses.

(b) The hearing shall be informal in nature, and the Administrative Law Judge shall not be bound by formal rules of evidence.

§ 60-30.35 Recommended decision after hearing.

Within 15 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the Administrative Law Judge's recommendations shall not be delayed pending receipt of such briefs. These recommendations shall be certified, together with the record, to the Secretary for a final Administrative Order. The recommended decision shall be served on all parties and amici to the proceeding.

§ 60-30.36 Exceptions to recommendations.

Within 10 days after receipt of the recommended findings, conclusions and decision, any party may submit exceptions to said recommendations. Exceptions may be responded to by other parties within 7 days after receipt by said parties of the exceptions. All exceptions and responses shall be filed with the Secretary. Briefs or exceptions and responses shall be filed with the Secretary. Briefs or exceptions and responses shall be served simultaneously on all parties to the proceeding.

§ 60-30.37 Final Administrative Order.

(a) After expiration of the time for filing exceptions, the Secretary shall issue a final Administrative Order which shall be served on all parties. Unless the Secretary issues a final Administrative Order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60-30.30 shall be applicable to this subsection.

Authority: E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086.

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Friday
December 28, 1979

Part VI

Department of Labor

Office of Federal Contract Compliance Programs

Government Contractors; Affirmative Action Requirements

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-2, 60-20, 60-30, 60-50, 60-60, 60-250, and 60-741

Government Contractors; Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule makes general revisions to a limited number of the regulatory provisions under Executive Order 11246, as amended, and under sections 402 and 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and the Rehabilitation Act of 1973, as amended, respectively (sections 402 and 503). To the extent clarity permits, the proposal also consolidates and integrates certain portions of the regulations pertaining to sections 402 and 503 into 41 CFR Part 60-1, which presently is devoted solely to regulations implementing Executive Order 11246.

DATES: Comments will be received until February 26, 1980.

FOR FURTHER INFORMATION CONTACT: Edward E. Mitchell, Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION: The regulations proposed have been the subject of extensive consultation with groups protected under the three laws administered by the Office of Federal Contract Compliance Programs (OFCCP) and contractor groups covered by the three laws. OFCCP also consulted with, or offered to consult with, other interested groups such as unions and public interest groups. These consultations were carried out in the spirit of Executive Order 12044. In addition, the Equal Employment Opportunity Commission (EEOC) and other Federal EEO agencies were consulted in accordance with Executive Order 12067.

The proposal uses the short form amending procedure in which only those sections of the regulations which would be amended are published. This procedure is designed to focus public comments directly to those items for which changes actually are proposed.

The regulations will continue to contain phrases, words, etc., which could benefit from editorial changes. Accordingly, OFCCP is considering making non-substantive changes, to those parts of the regulations, and perhaps republishing all of Chapter 60 at the time of final rulemaking. This procedure will allow users of the OFCCP regulations to have in one place all the regulations applicable to the three programs until they are completely codified into the Code of Federal Regulations, and the Code is published.

After consolidation OFCCP instituted a practice of reviewing in a single compliance review a contractor's compliance with each of the three laws administered by OFCCP. To reflect this unified approach to enforcement, an effort has been made here to consolidate and integrate the regulations to the extent possible. Although it has not been possible to integrate the regulations completely, the proposal would incorporate into Part 60-1 important elements which are common to all three programs. Accordingly, a substantial number of provisions presently in 41 CFR Part 60-250 and 60-741 are proposed to be consolidated into Part 60-1.

Some rearrangement of the regulations also has been accomplished. The proposed arrangement conforms essentially to the order of events as they unfold in the course of a compliance review.

Summary of Proposed Changes

Section 60-1.1. This section has not been revised since it first was published, and was the only regulation implementing the Executive Order. It is to be amended to reflect that other regulations in Chapter 60 also contain obligations of contractors. In addition, it will reflect the consolidation into Part 60-1 of certain regulations pertaining to sections 402 and 503.

Section 60-1.3. The definition section contains definitions applicable to each program. This should simplify matters as a number of the definitions in Part 60-250 and 60-741 (veterans and handicapped regulations) are identical to the regulations in 41 CFR 60-1.3 which implement the Executive Order. Some definitions have been amended to reflect statutory changes (see, for example, the proposed definition of handicapped individual). In addition, throughout the proposal, references to "the equal opportunity clause, rules, regulations and orders" have been eliminated. Instead the word "Order" encompasses each of these items. The Department's view is that these references are useless repetition which do little more than add to the length of the regulations. Similarly, references to "subcontract" and "subcontractor" have been dropped with the understanding that "contract" and "contractor," as applicable, subsume these meanings. This same approach has been followed in referring to the "Act" or to "sections 402 and 503". That is, when the regulations state that compliance with the "Act" or with "sections 402 or 503" is required, they mean that compliance with the regulations is required also.

Section 60-1.5(a). Generally, contracts for $10,000 or less are exempt from the requirements of the Order. This exemption has not applied to financial institutions which are covered by the Order if they act as depositories of Federal funds in any amount or as issuing or paying agents for U.S. savings bonds or savings notes in any amount. In addition, OFCCP consistently has maintained that Federal deposit insurance is a contract within the meaning of the Order. The proposal would codify this position into the regulations for the first time, and such contracts also would be excluded from the $10,000 and under exemption.

Under the current regulations, most agencies of state and local governments which do not participate on or under a covered contract are not required to comply with the Order or with sections 402 and 503. Neither are such agencies required to file the annual compliance report (EEO-1) or develop and maintain written affirmative action programs. Educational institutions and medical facilities of state and local governments are required to develop and maintain AAPs, however. The proposal also would add utilities which comprise part of a state or local government to the list of those agencies which must develop and maintain written affirmative action programs.

Section 60-1.7. This section provides that contractors with contracts of $50,000 must file the EEO-1 report. The amendment would require the report to be filed by contractors with contracts which aggregate to a total of $50,000 or more in any 12-month period. In addition, financial institutions with Federal deposit insurance also would be required to file the annual reports. (See comments on sections 60-1.5 and 60-1.40.)

Section 60-1.8. This section is to be amended to delete the certification of nonsegregated facilities. This proposal will reduce a substantial amount of paper work without reducing protection because the prohibition against segregated facilities is retained, and will be monitored through compliance investigations.

Section 60-1.9. The proposal requires that unions be allowed to present their

views to OFCCP when compliance may necessitate a revision in the collective bargaining agreement. (Also, see discussion on § 60.1.25.)

Section 60–1–20. The major change in this section is that the provisions relating to compliance reviews under the Executive Order will be applicable to compliance reviews under sections 402 and 503. A number of other changes (such as transferring provisions from Part 60–60) have been made but no basic substantive requirements have been added.

Section 60–1.21. The preaward review has always been a major factor in the implementation of the Executive Order. However, because preaward reviews are required for each award in excess of $1 million (if the establishment has not been reviewed in the past 12 months), preaward reviews have severely impeded OFCCP's efforts to plan and carry out other compliance reviews.

The benefits of placing so much emphasis on the preaward review are dubious, because every contract of $1 million or more does not necessarily carry any expansion of employment opportunities with it. Some contracts of $1 million or more, for example, regularly are awarded to small family-owned businesses which employ no more than five employees, all of whom may be part of the family which owns the business.

To cope better with this situation, OFCCP is proposing several changes. First, while OFCCP will continue to receive preaward requests of all awards in excess of $1 million, 45-days notice will be required for formally advertised competitive contracts and 120-days notice will be required for negotiated contracts. Second, a preaward review will be required if the establishment has at least 250 employees and a compliance review has not been conducted in the 24 months immediately preceding the notice of award. It is estimated, based upon OFCCP's experience over the past year, that the combination of 250 employees and 24 months will eliminate a total of 11,800 mandatory preaward reviews a year. The resources freed by this change will be used to conduct comprehensive compliacne reviews under OFCCP's targeting system or other procedures. With these new standards in effect, OFCCP still expects to conduct approximately 1,200 preaward reviews a year (based upon current preaward demand levels).

The proposal also would authorize OFCCP to conduct discretionary preawards even for those contractors which do not meet the minimal 250 employees and 24-month preaward review standards. In determining whether to conduct a discretionary preaward, OFCCP would consider the company's past EEO performance, its current EEO profile and indications of underutilization, the volume and nature of complaints filed by employees against the company, whether the contractor is in a growth industry, employment opportunities resulting from the contractor's expansion or turnover in its workforce, employment opportunities resulting from the contract about to be awarded and whether OFCCP has resources to conduct the review.

Subsection (i) of proposed § 60–1.21 also will allow OFCCP to ask contracting agencies not to enter into contracts with contractors, which have stated that they no longer will contract with the Government, until a preaward review has been conducted since such contractors would not have been subject to regular compliance reviews. This procedure will allow OFCCP to conduct reviews of such contractors at some time prior to their receiving a new contract. The preaward requirement also would be applicable to sections 402 and 503 consistent with OFCCP's practice of conducting reviews under each of the programs simultaneously.

Section 60–1.22. No substantive changes are proposed.

Section 60–1.23—60–1.24. The basic change in these sections is that complaints may be filed by third parties. Another change would be to codify the practice of investigating outstanding complaints during a compliance review. This approach would apply to complaints which are deferred to EEOC and which are not resolved at the time of the review. The present regulations permit referral of complaints to EEOC. The proposal would defer complaints and OFCCP would not lose jurisdiction over the complaints so long as they remain unresolved. OFCCP also would send copies of all complaints to the EEOC.

Present 41 CFR 60–1.24(c)(4) is proposed to be deleted. This section permits a contractor to comply with the demands of OFCCP and then request a hearing. The agency's experience has been, however, that most frequently the contactor does not comply with demands of the agency prior to requesting the hearing. If the section is retained it specifically will provide for a record hearing before an OFCCP official. A hearing before an Administrative Law Judge or with live testimony is not contemplated. Comments specifically are requested on this proposal.

Section 60–1.25. A new section dealing with show cause notices and notices of violation is to be added. A show cause notice is to be used in both compliance reviews and complaint investigations when the violation is one not previously addressed by a conciliation agreement. A notice of violation will be used when circumstances do not permit 30 days to complete the review or when the violation is one previously addressed by a conciliation agreement. When the show cause notice proposes a change in employment conditions governed by a collective bargaining agreement, the union shall be given notice of the proposed change. The union also would be invited to conciliate on those issues related to the change in the collective bargaining agreement.

Section 60–1.26. This section codifies existing OFCCP practices and procedures regarding conciliation agreements. A conciliation agreement normally will be required when a major or serious violation is disclosed. Letters of commitment will normally be permitted when minor violations are disclosed.

Section 60–1.27. No substantive change is proposed.

Section 60–1.28. The proposal incorporates sections 402 and 503 authority into this section. It also prohibits intimidation or discrimination against an employee because he/she opposes an illegal employment practice.

Section 60–1.29. This section has been reorganized. The basic change is an addition of a preliminary enforcement provision to allow expedited hearings in a number of instances. This section may be used, for example, when a question of a contactor's responsibility is raised in a preaward situation. See discussion on 41 CFR 60–30.38 also.

Section 60–1.30. No substantive change is proposed but a requirement has been added for the Director to notify prime contractors of a debarred contractor's ineligibility for subcontracts.

Section 60–1.31. The procedure for reinstatement for debarred contractors is expanded. The proposal makes it clear that the reinstatement will be conditioned upon the ability of the contractor to satisfy the Director that it will carry out employment practices which comply with the three laws. The burden is on the contractor to demonstrate that it is entitled to reinstatement. Compliance reviews may be required, or the matter may be referred back to the Administrative Law Judge for additional hearings as part of the reinstatement process. Intervenors who participated in the debarment process would be allowed to make submissions either supporting or opposing the reinstatement.

Section 60–1.40. The proposal amends this section to allow aggregation of

contracts to establish the $50,000 floor for coverage under the written affirmative action program requirement. A new amendment is proposed to include requirements that the nonconstruction employees of a construction contractor are to be included in the written affirmative action program.

Section 60–1.43. No substantive changes are proposed. Computer tapes and printouts are added to the list of items but they already are subject to production under 41 CFR 60–30.10.

Part 60–2

Section 60–2.1. This section repeats the aggregation requirement of contracts (i.e. dollar volumes) for the purpose of establishing coverage under Part 60–2. It also deletes references to enforcement procedures, because these procedures are to be transferred to Subpart B of Part 60–1.

Section 60–2.2. References to show cause notices, responsibility determinations, and other enforcement procedures are deleted and transferred to Part 60–1.

Section 60–2.3. The proposal transfers from Part 60–60 certain requirements relating to the maintenance and submission of affirmative action program and support data. The time for submitting AAPs has been reduced to 15 days.

Part 60–20

Sections 60–20.2 through 60–20.8. The proposal reorganizes the Sex Discrimination Guidelines slightly. The basic changes relate to maternity leave practices and to violations based on sexual advances and favors. The maternity leave provisions have been conformed to the Pregnancy Discrimination Act.

No changes are proposed with regard to employer contributions for insurance, pensions, welfare programs and similar fringe benefits because a proposal already has been published on this issue (43 FR 38057). The Department of Labor anticipates publishing a final rule on this issue very shortly.

Part 60–30

Section 60–30.1. A number of changes are proposed for the rules of practice. Some of these are technical in nature and some correct oversights not noted when the rules first were published. Matters such as a requirement for pretrial and final pretrial conferences and a requirement that discovery be terminated in advance of the hearing have been added. Emphasis also is to be placed on the fact that the rules of practice notice-plead rather than fact-plead. An amendment is proposed which excludes weekends and legal holidays when the time for responding to a matter is seven days or less. The rules also make specific provision for the Under Secretary to issue the final administrative order in the absence of the Secretary or when the Secretary may disqualify himself for some reason.

A major addition to Part 60–30 is a section providing for preliminary enforcement proceedings. The procedure is designed to expedite the resolution of issues which do not involve complex factual situations. The preliminary proceeding may be initiated on a single issue or it may be included in a complaint which alleges general violations. In the latter instances, the preliminary hearing will be separated from the general issues and proceed on an expedited basis. Fact, rather than notice pleading, will be required for preliminary hearing issues and discovery will be allowed only upon leave of the Administrative Law Judge for compelling reasons. With respect to issues which involve the contractor's responsibility to perform its EEO obligations, the Administrative Law Judge's decision will not be subject to administrative review. All other decisions in the preliminary proceeding, however, will be in the form of a recommended decision to the Secretary. (Also, see discussion of § 60–1.29 above.)

Part 60–50

The proposal also states that no amendments are being proposed with respect to religious accommodation. OFCCP will postpone rulemaking in this area until EEOC goes to final rulemaking with its prior proposal on religious accommodation and perhaps publish a final rule based on the EEOC final rule. A number of religious groups have expressed concern that they are not protected under the religious guidelines. This concern presumably results from the fact that § 60–50.1(b) mentions specific religious and ethnic groups. To avoid any confusion about protected groups under that section, the specific references have been dropped.

Part 60–60

Part 60–60 (also known as Revised Order No. 14) is to be deleted. A number of the Part 60–60 procedures already have been incorporated into the Compliance Manual, and a number of the remaining ones are proposed to be ncorporated into Parts 60–1 or 60–2.

Parts 60–250 and 60–741

No substantive changes are proposed for these two parts. The definition of a handicapped individual has been expanded to incorporate a recent amendment to the Rehabilitation Act. Mostly, however, the changes proposed in these two parts relate to consolidating and integrating various sections into Part 60–1. The definition sections of these two parts, for example, are proposed to be deleted and the relevant portions are proposed to be consolidated into Part 60–1.

Finally, published elsewhere in the Federal Register today is a final rule amending Parts 60–1, 60–2 and 60–30. That rule results from a proposal published on March 20, 1979 (44 FR 17136). Except for the amendment to Part 60–2, which establishes a requirement for an affirmative action program summary, it is the Department of Labor's intention to withdraw the final rule when the regulations proposed herein become final. This proposal treats the same issues contained in the final rule but the procedures adopted in the final rule are necessary, on an interim basis, for orderly administration of the Executive Order program.

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044 (43 FR 12661) or under the Department's guidelines implementing Executive Order 12044.

This document was prepared under the direction and control of Weldon J. Rougeau, Director, Office of Federal Contract Compliance Programs.

Accordingly, it is proposed to amend 41 CFR Chapter 60 as set forth below.

Dated: December 21, 1979.

Ray Marshall,
Secretary of Labor.
Donald Elisburg,
Assistant Secretary, Employment Standards.
Weldon J. Rougeau,
Director, Office of Federal Contract Compliance Programs.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. 41 CFR 60–1.1 is amended to read as follows:

§ 60–1.1 Purpose and application.

(a) The purpose of the regulations in this part is to set forth the general obligations of Government contractors and of contractors performing on federally assisted construction contracts under Executive Order 11246, and to promote and ensure equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Government contractors or with

contractors performing under federally assisted construction contracts. The regulations in this part also set forth some general obligations which are equally applicable to contractors covered by section 503 of the Rehabilitation Act of 1973, as amended, and section 402 or the Vietnam Era Veterans Readjustment Assistance Act of 1974. When the regulations in this part implement sections 402 and 503 the regulations expressly indicate that fact. Specific obligations of contractors covered under the three laws are set forth in other parts of the regulations in this chapter.

(b) The regulations in this part apply to all contracting agencies of the Government and to contractors which perform under Government contracts. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this chapter govern all disputes relative to a contractor's compliance with its obligations under the three laws regardless of whether its contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all the sanctions authorized by the order or by the regulations implementing sections 402 and 503. The regulations in this chapter do not apply in any action taken to effect compliance with respect to employment practices subject to Title VI of the Civil Rights Act of 1964. The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract. Neither do the regulations limit the exercise by the Secretary of powers not herein specifically set forth but granted to him/her by the Order or by sections 402 and 503.

2. 41 CFR 60–1.3 is amended by making the following amendments, deletions and substitutions:

§ 60–1.3 Definitions.

"Act" means the Vietnam Era Veterans Readjustment Assistance Act, as amended, and the Rehabilitation Act, as amended, as applicable.

* * * * *

"Administrative complaint" means the pleading which commences an administrative enforcement proceeding under the Order, section 402 or section 503.

* * * * *

"Affirmative action clause" means the contract clause set forth at 41 CFR 60–250.4 or at 41 CFR 60–741.4, as applicable.

* * * * *

"Applicant" means a person applying for Federal assistance involving a construction contract or a person who has received such assistance. "Applicant" also means a person who is seeking employment or who has sought employment with a contractor.

"Assistant Secretary" means the Assistant Secretary of Labor for Employment Standards or his/her designee.

* * * * *

"Complaint" means a charge filed with OFCCP by an employee, applicant for employment or by a third party alleging discriminatory employment practices under the Order, or under sections 402 and 503.

* * * * *

"Contract" means any Government contract, subcontract, and with respect to the Order, or any federally-assisted construction contract or subcontract. The regulations in this chapter frequently refer only to contract. The word subcontract is subsumed under the word contract.

* * * * *

"Contractor" means a contractor or subcontractor, and with respect to the Order, a federally-assisted construction contractor or subcontractor. For the purpose of Subpart B of this part and part 60–30 of this chapter the term also includes any person who has held a contract. The regulations in this chapter frequently refer only to contractor. The word subcontractor is subsumed under the word contractor.

* * * * *

"Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

"Establishment" means the location of a contractor's business or operations generally having some component which exercises personnel authority and responsibilities. Small locations having no personnel authority or responsibilities may be considered to be part of an establishment in a different location if such locations are within the same chain of command.

* * * * *

"Facilities" means buildings, structures, equipment, roads, walks, parking lots or other real or personal property.

* * * * *

"Handicapped individual" means any person who (a) has a physical or mental impairment which substantially limits one or more of the person's major life activities; (b) has a record of such impairment; or (c) is regarded as having such an impairment. A handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining, or advancing in employment because of a real or perceived handicap. The term does not include an individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of this current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. For purposes of this chapter, "major life activities" includes employment or training. "Regarded as" means the employer perceives the individual as having an impairment whether or not there is an impairment.

* * * * *

"Order," "Executive Order," or "Executive Order 11246" means parts II, III, and IV of Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such Order, and any other Executive Order superseding such Order. Order specifically includes the equal opportunity clause and the rules, regulations and orders issued pursuant to the Order. The short form reference of Order is used simply to avoid needless repetition of the above phrases.

"Prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part and 41 CFR Part 60–30, any person who has held a contract subject to the Order or to sections 402 and 503.

"Qualified disabled veteran" means a disabled veteran as defined in this section 60–1.3 who is capable of performing a particular job, with reasonable accommodation to his or her handicap or disability.

"Qualified handicapped individual" means a handicapped individual capable of performing a particular job with reasonable accommodation to his or her handicap or disability.

* * * * *

"Section 402" means section 402 of the Vietnam Era Veterans' Readjustment Assistant Act, as amended. The reference, section 402, specifically

includes rules and regulations promulgated pursuant to the Act.

"Section 503" means Section 503 of the Rehabilitation Act, as amended. The reference, section 503, specifically includes rules and regulations promulgated pursuant to the Act.

* * * * *

"Veteran of the Vietnam Era" means a person (a) who (1) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or (2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975, and (b) who was so discharged or released within 48 months preceding the alleged violation of the Act.

3. 41 CFR 60–1.5(a)(1) and (4) are amended to read as follows:

§ 60–1.5 Exemptions.

(a) *General.*—(1) *Transactions of $10,000 or under.* Contracts not exceeding $10,000, other than (i) Government bills of lading and (ii) contracts with financial institutions which serve as depositories of Government funds in any amount, or which serve as issuing or redeeming agents for U.S. savings bonds and savings notes or which subscribe to Federal deposit insurance, are exempt from the requirements of the Order. In determining the applicability of this exemption to any federally assisted construction contract, the amount of such contract rather than the amount of the Federal financial assistance shall govern. No agency or contractor, shall procure supplies or services in a manner so as to avoid applicability of the Order: *Provided,* That where a contractor has contracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding $10,000, the $10,000 or under exemption does not apply, and the contracts are subject to the Order regardless of whether any single contract exceeds $10,000.

* * * * *

(4) Contracts with state or local governments. The Order, and sections 402 and 503, with respect to a contract with a state or local government (or any agency thereof) shall apply only to the agency or agencies of such government which perform on the contract. Agencies, instrumentalities or subdivisions of state or local governments, except educational institutions, utilities, and medical facilities, are exempt from filing the annual compliance report required by § 60–1.7(a)(1) of this part and from maintaining a written affirmative action program prescribed by § 60–1.40 of this part and Part 60–2 of this chapter.

* * * * *

4. 41 CFR 60–1.7(a)(1) is amended to read as follows:

§ 60–1.7 Reports and other required information.

(a) *Requirements for contractors.* (1) Each contractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission or such form as may hereafter be promulgated in its place if such contractor (i) has 50 or more employees: and (ii) has a contract or contracts which total $50,000 or more, or reasonably may be expected to total $50,000 or more in any 12-month period; or (iii) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and notes in any amount, or subscribes to Federal deposit insurance.

* * * * *

5. 41 CFR 60–1.8 is amended to read as follows:

§ 60–1.8 Segregated facilities.

To comply with its obligations under the equal opportunity clause, a contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis or race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. This obligation extends to all contracts regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, restaurants, and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees: *Provided,* That separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

6. 41 CFR 60–1.9 is amended to read as follows:

§ 60–1.9 Compliance by labor unions and by recruiting and training agencies.

(a) The policy of OFCCP is to use its best efforts, directly and through agencies, contractors, applicants, state and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts to cooperate with, and to comply in the implementation of, the purposes of the Order and of sections 402 and 503.

(b) To effectuate the purposes of paragraph (a) of this section, the Director may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(c) Whenever compliance with the Order or with sections 402 and 503 necessitates a revision of a collective bargaining agreement or which otherwise significantly affects a substantial number of employees represented by the union, the collective bargaining representatives shall be given an opportunity to present their views to OFCCP. (See 41 CFR 60–1.25(b)(4).)

(d) The Director may notify any Federal, state, or local agency of his/her conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his/her judgment has failed to cooperate with OFCCP, agencies, contractors or applicants in carrying out the purposes of the Order or of sections 402 and 503. The Director also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies when there is reason to believe that the practices of any such labor organization or agency violate Title VII of the Civil Rights Act of 1964 or other provisions of Federal law.

7. 41 CFR 60–1.20 is amended to read as follows:

§ 60–1.20 Compliance reviews.

(a) The purpose of a compliance review is to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, terminated, otherwise treated during employment without regard to race, color, religion, sex, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices and policies,

and conditions resulting therefrom. Compliance reviews normally are conducted in three stages (desk audit, on-site review and off-site analysis). The desk audit may be shortened or omitted, however, when an immediate on-site review (e.g., where a preaward compliance review is involved, where intimidation is alleged or other circumstances do not permit a desk audit) is required. (See, 41 CFR 60–1.24(b).)

(b) Compliance reviews generally are conducted under the direction of an OFCCP Assistant Regional Administrator, but the Director is authorized to designate other officials for this purpose.

(c) Where deficiencies or violations are found, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the Order, it must make a specific commitment, in a written conciliation agreement or a letter of commitment, as appropriate, to correct any such deficiencies or violations. Minor technical deficiencies usually may be resolved in a letter of commitment from the contractor. The agreement or letter must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified, however, that making such commitments does not preclude future determinations of noncompliance based either on a finding that the commitments are not sufficient to achieve compliance or on violations not previously revealed in a compliance review or complaint investigation.

(d) This section also shall govern compliance reviews conducted under sections 402 and 503 to the extent this section is not inconsistent with the other regulations implementing sections 402 and 503.

8. 41 CFR 60–1.21 is renumbered 41 CFR 60–1.22 and a new 41 CFR 60–1.21 is added to read as follows:

§ 60–1.21 Preaward reviews.

(a) The purpose of a pre-award compliance review is to determine whether a responsive contractor or bidder will be able to comply with the requirements of the Order and with sections 402 and 503.

(b) Each contracting agency shall include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed $1 million, the prospective contractor and known first-tier subcontractors with subcontracts in exces of $1 million will be subject to a compliance review before the award of the contract.

(c) Prior to the award of any nonconstruction contract in excess of $1 million, the contracting agency shall give written notice of the proposed award to the OFCCP Assistant Regional Administrator of the Region in which the contract is to be performed as far in advance of the award date as possible. In the case of formally advertised competitive contracts, the notice shall be given no less than 45 days in advance of the award date. In the case of negotiated contracts, the notice shall be given no less than 120 days in advance of the award date. The notice shall identify the projected prime contractor and all known first tier subcontractors or prospective subcontractors projected to receive subcontracts in excess of $1 million.

(d) If the establishment where the contract or subcontract is to be performed has 250 or more employees and no compliance review of that establishment has been conducted in the 24 months prior to the notification, a compliance review of the establishment shall be commenced on a priority basis.

(e) OFCCP is authorized to conduct preaward compliance reviews of any contractor even though the establishment has less than 250 employees and a compliance review has been conducted within the last 24 months. In determining whether to conduct a preaward review under this paragraph (e), OFCCP may consider (1) the past EEO performance of the contractor, including its current EEO profile and indications of underutilization; (2) The volume and nature of complaints filed by employees or applicants against he contractor; (3) whether the contractor is in a growth industry; (4) the level of employment or promotional opportunities resulting from the contractor's expansion of or turnover in the workforce; (5) the employment opportunities likely to result from the contract in issue; and (6) whether resources are available to conduct the review.

(f) If, prior to the award date of the contract or subcontract, the contracting agency has not provided the notice required by paragraph (c) of this section, the preaward compliance review has not been completed or the contractor-bidder's alleged noncompliance has not been resolved, the Director may request the contracting agency to delay the award of the contract, until such time as the contractor is found eligible or ineligible for the contract in accordance with the preliminary hearing procedures in 41 CFR 60–30.38 of this chapter. If such a request is made, the award of the contract shall be delayed, unless the contracting agency determines that a delay is contrary to the national security of the United States. Written notification of such determination shall be given to the Director within 30 days of the determination (see 41 CFR 60–1.5(c)): *Provided*, That unless the preliminary hearing procedures in 41 CFR 60–30.38 have been invoked or will be invoked shortly, Executive Order clearance for award of the contract shall not be withheld.

(g) The preaward review authorized by this section shall be conducted in accordance with the procedures of § 60–1.20 of this part to the extent that those procedures are not inconsistent with the provisions of this section.

(h) If by the award date, the preaward compliance review has not been completed or a decision to invoke the preliminary hearing procedure in 41 CFR 60–30.38 of this chapter has not been made, Executive Order clearance for the contract shall be granted, except as provided in paragraph (i) of this seciton, and the review shall be completed on an expedited basis.

(i) Upon the request of the Director, contracting agencies shall not enter into contracts or approve the entry into contracts with any bidder or prospective contractor or subcontractor which previously has stated that it no longer will contract with the Government, until a preaward compliance review has been conducted and it has been determined that the bidder or prospective contractor will be able to comply with the Order and with sections 402 and 503.

9. 41 CFR 60–1.22 is combined with 41 CFR 60–1.21 to form a new CFR 60–1.22 to read as follows:

§ 60–1.22 Filing complaints.

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extending by the Director for good cause shown. Complaints may be filed with the OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or with any OFCCP regional or area office.

10. 41 CFR 60–1.23 is amended to read as follows:

§ 60–1.23 Contents of complaint.

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor

committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Signed third party complaints which do not identify the complainant will be accepted, whether or not signed by the authorized representative provided that the other information required by this paragraph is included.

(b) If a complaint contains incomplete information, OFFCP shall seek the needed information from the complainant or other person filing the complaint. In the event such information is not furnished within 60 days of the date of such request, the case may be closed.

11. 41 CFR 60–1.24 is amended to read as follows:

§ 60–1.24 Processing complaints.

(a) *Complaints. OFCCP may defer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, in lieu of processing them under the Order. Upon deferring a complaint to the EEOC, OFCCP shall promptly notify the complainant. OFCCP also may transmit a copy of any complaint to EEOC and to any state or local agency with jurisdiction over the subject matter of the complaint.*

(b) *Complaint investigations. If a complaint is retained for investigation, OFCCP shall conduct a thorough evaluation of the allegations of the complaint and develop a complete case record. In addition, in conducting a compliance review, OFCCP shall investigate and resolve class or systemic complaints against the establishment on file with OFCCP and unresolved at the commencement of the compliance review, including such complaints deferred to EEOC.*

(c) *Resolution of matters.* (1) If any complaint investigation indicates a violation of the Order, reasonable efforts shall be made to secure compliance through conciliation and persuasion.

(2) For reasonable cause shown, the Director may, on his/her own motion or pursuant to a request, reconsider or cause to be reconsidered a matter arising under the Order or under sections 402 and 503.

(3) Where any complaint investigation indicates a violation of the Order and the matter has not been resolved by informal means, the matter may be recommended to the Office of the Solicitor for legal enforcement proceedings.

(12) A new 41 CFR 60–1.25 is added to read as follows:

§ 60–1.25 Show cause notices and notices of violations.

(a) *General.* At the conclusion of a compliance review or complaint investigation conducted pursuant to the Order or sections 402 and 503, a notice to show cause or a notice of violations shall be served on the contractor if deficiencies were disclosed in the review or investigation, and the deficiencies have not been corrected through a conciliation agreement, letter of commitment or consent decree.

(b) *Show cause notices.* (1) A notice to show cause why enforcement proceedings should not be initiated shall be issued when a deficiency is disclosed in a compliance review or complaint investigation, and the deficiency is not the subject of an existing conciliation agreement, letter of commitment, or consent or other decree between the contractor and the Department of Labor, the Attorney General, acting on behalf of OFCCP, or a former compliance agency. A show cause notice also should be used where the relief obtained in a prior conciliation agreement, upon further review, is determined inadequate to correct the violation or deficiency.

(2) A notice to show cause should contain:

(i) An itemization of the sections of the Order, sections 402 and 503 and of the regulations with which the contractor has been found in violation, and a summary of the conditions, practices, facts, or circumstances which give rise to each violation;

(ii) A statement of the corrective actions proposed by OFCCP to achieve compliance;

(iii) A request for a written response to the findings, including commitments to corrective actions or the presentation of the opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(3) The contractor shall be accorded 30 days, or such longer period as may be authorized by the Director or his/her designee, to establish that it is not covered by or is in compliance with the Order and sections 402 and 503 or to enter into a conciliation agreement or letter of commitment.

(c) *Notice of violations.* (1) A notice of violation may be used where circumstances do not permit 30 days to resolve the matters (e.g., pre-award compliance reviews), and may be used at any time during the compliance review or complaint investigation (e.g., where serious violations such as intimidation, or interference with the orderly process of the review or investigation are alleged). A notice of violation shall contain a short and plain statement of the deficiency adequate enough to put the contractor on notice of the violation with which it is changed.

(2) A notice of violation also may be used when the compliance review or complaint investigation discloses a violation of a matter which is the subject of a conciliation agreement, letter of commitment or consent or other decree between the contractor and the Department of Labor, the Attorney General, acting on behalf of OFCCP, or a former compliance agency. The notice of violation shall contain a statement showing in what respects the contractor is in violation and accord the contractor a reasonable period of time (not to exceed 15 days) in which to respond and for conciliation, except that conciliation is not required (although some discussions may be appropriate) when a violation of a conciliation agreement is alleged.

(d) When a notice to show cause or notice of violations proposes a change in the terms or conditions of employment which are governed by the provisions of a collective bargaining agreement, the collective bargaining representative shall be given notice of the proposed change and shall be invited to participate in conciliation discussions, to the extent those discussions relate to such change. (See 41 CFR 60–1.9.)

13. A new 41 CFR 60–1.26 is added to read as follows:

§ 60–1.26 Conciliation agreements.

(a) A conciliation agreement is a written agreement between OFCCP and a contractor by which the contractor undertakes specific obligations to correct or remedy noncompliance with the Order or with sections 402 and 503. A conciliation agreement normally is required where a compliance review, complaint investigation or some other review discloses violations of the Order or of sections 402 and 503, and (1) the contractor is willing to correct the violations or deficiencies and (2) OFCCP determines that a settlement (rather than formal enforcement) is appropriate. The agreement shall provide for the remedial relief necessary to correct the violations or deficiencies which may include priority rights to hire or promotion, training, back pay, front pay and retroactive seniority, etc., for an affected class or for individuals, as appropriate.

(b) A conciliation agreement shall include (1) A statement of each deficiency or violation; (2) the corresponding precise remedial action to

be taken and a timetable for implementation; (3) a requirement for periodic reporting to OFCCP as to implementation of the agreement, if appropriate; and (4) a copy of the notice to show cause or notice of violation when such has been previously issued.

(c) A conciliation agreement is effective when it has been signed by the contractor and the proper Assistant Regional Administrator, OFCCP, unless within 45 days of receipt from the Assistant Regional Administrator, the Director rejects the agreement.

(d) Conciliation agreements shall not be entered into after enforcement proceedings have been initiated. Settlements of enforcement proceedings by the Office of the Solicitor normally will be by consent decree.

(e) Letters of commitment, in lieu of conciliation agreements, are appropriate for resolving minor technical deficiencies.

14. 41 CFR 60–1.25 is renumbered 41 CFR 60–1.27 and is amended to read as follows:

§ 60–1.27 Assumption of jurisdiction by the Director.

The Director may inquire into the status of any pending matter. Where the Director considers it necessary or appropriate to the achievement of the purposes of the Order or of sections 402 and 503 he/she may assume jurisdiction over the matter and proceed as provided in this chapter. Whenever the Director assumes jurisdiction over any matter, he/she may conduct, or have conducted, such investigation, hold such hearings, make such findings, issue such recommendations and directives and take such other action as may be necessary or appropriate to achieve the purposes of the Order or of sections 402 and 503.

15. 41 CFR 60–1.32 is renumbered 41 CFR 60–1.28 and is amended to read as follows:

§ 60–1.28 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the Order, and in Parts 60–250 and 60–741 of this chapter may be exercised against any contractor or applicant which fails to take all necessary steps to ensure that no person intimidates, threatens coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Order, sections 402 and 503 or any other Federal, state or local laws requiring equal employment opportunity. Such sanctions and penalties also apply to contractors or applicants which discriminate against a person because he or she has opposed any employment practice unlawful under the Order, sections 402 and 503, Title VII of the Civil Rights Act of 1964, as amended, or any other Federal, state or local laws.

16. 41 CFR 60–1.26 is renumbered 41 CFR 60–1.29. Subsection (g) of 41 CFR 60–1.26 is deleted and subsection (f) is renumbered subsection (g). The remainder of the section is amended to read as follows:

§ 60–1.29 Enforcement proceedings.

(a) *Referrals to the Office of the Solicitor.* If, as a result of a compliance review, complaint investigation or some other review, OFCCP believes that the Order or that sections 402 and 503 have been violated, the matter may be referred to the Office of the Solicitor for consideration of legal enforcement proceedings.

(b) *Violations.* Violations may be found based upon, *inter alia,* any of the following: (1) the results of a compliance review or complaint investigation; (2) analysis of an affirmative action program; (3) the results of an on-site review of the contractor's compliance with the Order or of sections 402 and 503; (4) a contractor's refusal or failure to submit an affirmative action program; (5) a contractor's refusal or failure to permit an on-site compliance review or complaint investigation to be conducted; (6) a contractor's refusal or failure to maintain records and other information, or to supply copies of such records or information required to be maintained or supplied by the Order or by sections 402 and 503; and (7) any substantial or material violation of the contractual provisions of the Order or of sections 402 and 503.

(c) *Administrative enforcement proceedings.* Administrative enforcement proceedings are brought by the Office of the Solicitor and shall be conducted under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity under the Contract Compliance Programs contained in Part 60–30 of this chapter. Administrative enforcement proceedings may be commenced to enjoin violations of the Order or of sections 402 and 503, to seek appropriate relief (which may include back pay, front pay, retroactive seniority, training, priority rights to hire or promotion, etc., for an affected class or for individuals) and to impose sanctions.

(d) *Special violations.* If the contractor refuses or fails to (1) submit an affirmative action program; (2) supply copies of records or other requested information; (3) allow OFCCP access to its premises for an on-site review or investigation; or (4) is being charged with intimidation or interference under § 60–1.28 of this part, and if conciliation efforts under this part are unsuccessful, administrative enforcement proceedings may be commenced without serving the contractor with a show cause notice or a notice of violation.

(e) *Preliminary Administrative Enforcement Proceedings.* Preliminary or summary enforcement proceedings under 41 CFR 60–30.38 may be appropriate when the evidence indicates one or more of the following violations of the Order, section 402 and section 503: (1) That the contractor is engaging in unlawful employment practices so as to make the contractor not responsible to perform its contractual EEO obligations (such as, where a preaward or other compliance review discloses evidence that the contractor is engaging in unlawful employment practices and the contractor has failed to change the practice); (2) the contractor has refused or failed to develop or submit a current affirmative action program; (3) the contractor has failed or refused to supply requested records or other information it is required to supply; (4) the contractor has failed or refused to permit access to its premises, to its records for reviewing or copying and to its employees or witnesses for interviewing or questioning during an on-site review or investigation; (5) the contractor has engaged in intimidation or retaliation in violation of § 60–1.28 of this part. Preliminary enforcement proceedings involving one or more such violations may be commenced by the Office of the Solicitor, and shall be conducted pursuant to the rules of practice for such proceedings under Part 60–30 of this chapter.

(f) *Judicial enforcement—referrals to the Department of Justice.* (1) Violations of the Order or the threat of violations of the Order may be referred to the Department of Justice for judicial enforcement. There are no procedural prerequisites to a referral to the Department of Justice.

(2) Whenever a matter has been referred to the Department of Justice for consideration of judicial proceeding, the Attorney General may bring a civil action against the contractor or any other person in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full

enjoyment of the rights secured by the Order, or any of the above.

(3) The Attorney General is authorized to conduct such investigation of the facts as he/she may deem necessary or appropriate to carry out his/her responsibilities under these regulations.

(4) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Director, is authorized to make reasonable efforts to secure compliance with the contract provisions of the Order. He/she may do so by providing the contractor and any other person with reasonable notice of findings, his/her intent to file suit, and the actions he/she believes necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other person a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(5) As used in this part, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(6) The Director or his/her designee, and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contactors or other persons may be engaged in patterns or practices in violation of the order, or of resistance to or interference with the full enjoyment of any of the rights secured by the Order, warranting judicial proceedings.

§§ 60-1.27—60-1.29 [Removed]

17. 41 CFR 60–1.27, 60–1.28 and 60–1.29 are deleted.

18. 41 CFR 60–1.30 is amended to read as follows:

§ 60-1.30 Debarment and contract ineligibility list.

No order for debarment from further Government contracts or subcontracts pursuant to section 209(a)(6) of the Order or pursuant to the regulations implementing section 402 and 503 shall be made without affording the contractor an opportunity for a hearing, either administrative or judicial. The Director periodically shall distribute a list to all executive departments and agencies giving the names of contractors who have been declared ineligible under the Order or under sections 402 and 503 for further Government contracts and subcontracts. The Director shall promptly notify the Comptroller General of the United States when contracts have been cancelled or terminated or when a contractor has been debarred from further Government contracts under the Order or under section 402 and 503. The Director shall take appropriate steps to notify prime contractors of the debarred contractor's ineligibility for subcontracts.

19. 41 CFR 60–1.31 is amended to read as follows:

§ 60-1.31 Petition for reinstatement for debarred contractors.

(a) Any contractor declared ineligible under the Order or under sections 402 and 503 for further contracts may petition the Director for reinstatement. The petition for reinstatement shall set forth what actions the contractor has taken to comply with the Order and with sections 402 and 503 and in what way the contractor will comply with requirements which may involve future performance. The burden shall be on the contractor to demonstrate that it is entitled to reinstatement.

(b) The Director may condition rescission of the debarment order and reinstatement of the contractor's eligibility for further contracts on the contractor's satisfying the Director that it has established and will implement personnel and employment policies in compliance with the provisions of the Order or of sections 402 and 503. In carrying out his/her responsibilities under this section, the Director may require that compliance reviews be conducted of the contractor's establishments, and that the contractor supply copies of any information relevant to determining its compliance with the Order or with sections 402 and 503. Reinstatement also may be conditioned on a program of compliance which may include meeting requirements not specifically mentioned in the debarment order where meeting these requirements is necessary to achieve compliance under the Order or under sections 402 and 503. Where the debarment was based on a determination of the contractor's liability but the extent of the relief or the number or identity of employees entitled to relief has not been determined, the Director may remand the matter to the Administrative Law Judge for a determination of such issues prior to reinstatement. On remand, from the Director, the Administrative Law Judge shall follow the procedures required by Part 60–30 of this chapter just as if it were a new matter, and reinstatement by the Director may be conditioned on the contractor's satisfying any relief finally determined to be owed.

(c) Any conditions upon which the rescission of the debarment order and reinstatement of the contractor are based shall be set forth by the Director in an order which shall be filed with the Administrative Law Judge and made a part of the record in the original proceeding from which the debarment resulted. The Administrative Law Judge shall retain jurisdiction, and any subsequent violations involving the same issues which gave rise to the debarment order or which are included in the reinstatement order issued by the Director may be raised by motion in the original proceeding.

(d) When a debarred contractor is reinstated, the Director shall take prompt action to notify the Comptroller General and the agencies which received notice of the debarment.

(e) The Director's decision on the petition for reinstatement shall constitute a final administrative order.

(f) Any party or person who participated (pursuant to 41 CFR 60–30.24) in the proceeding which gave rise to the debarment order may make submissions to the Director opposing or supporting the contractor's petition for reinstatement.

20. 41 CFR 60–1.40 is amended to read as follows:

§ 60-1.40 Affirmative action programs.

(a) *Requirements of programs.* Each nonconstruction contractor which has 50 or more employees and (1) has a contract of $50,000 or more; or (2) has Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (3) has one or more contracts which total $50,000 or more in any 12-month period, or (4) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit insurance, shall develop a written affirmative action program for each of its establishments. Each nonconstruction contractor shall require each subcontractor which has 50 or more employees and (i) has a subcontract of $50,000 or more; or (ii) has Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (iii) has one or more subcontracts which total $50,000 or more in any 12-month period; or (iv) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming

agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit insurance, to develop a written affirmative action program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority and female employment and an evaluation of opportunities for utilization of minority group and female personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups and women, including, when there is underutilization or other deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity.

(b) *Maintenance of programs.* Within 120 days from the commencement of the contract, each contractor covered by paragraph (a) above shall develop, implement, and maintain separate affirmative action programs for each of its establishments. A copy of the appropriate affirmative action program shall be maintained at each of the contractor's locations. An affirmative action program shall be part of the staffing and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to OFCCP upon request and the contractor's affirmative action program and the results it produces shall be evaluated as part of compliance review activities.

(c) *Application to construction contractors.* The provisions of this section 60–1.40 shall be applicable to the nonconstruction employees of a construction contractor with 50 or more nonconstruction employees and which has one or more contracts totaling $50,000 or more during any 12-month period.

21. 41 CFR 60–1.43 is amended to read as follows:

§ 60–1.43 Access to records and site of employment.

Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews which include interviewing employees, inspecting, copying and removing off-site copies of such books, records, accounts, and other material such as computer tapes and printouts as may be relevant to the matter under investigation and pertinent to compliance with the Order or with sections 402 and 503.

22. 41 CFR 60–1 is amended by renumbering 41 CFR 60–1.45, 60–1.46 and 60–1.47 to 41 CFR 60–1.48, 60–1.49 and 60–1.50 respectively, and by amending 41 CFR 60–1.44 and by adding a new 41 CFR 60–1.45, 60–1.46 and 60–1.47 to read as follows:

§ 60–1.44 Rulings and interpretations.

Rulings under or interpretations of the Order and of sections 402 and 503 shall be made by the Director.

§ 60–1.45 Adaptation of language.

Such necessary changes in language may be made in the equal opportunity clause of the Order and in the affirmative action clauses of sections 402 and 503 as shall be appropriate to identify properly the parties and their undertakings.

§ 60–1.46 Incorporation by reference.

The equal opportunity clause and the affirmative action clauses may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts as the Director may designate.

§ 60–1.47 Incorporation by operation of law.

By operation of the Order and sections 402 and 503, the equal opportunity clause of the Order and the affirmative action clauses of sections 402 and 503 shall be considered to be a part of every contract and subcontract required by the Order and sections 402 and 503 to include such clauses regardless of whether the clauses are physically incorporated into such contracts and regardless of whether the contract is written.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

23. 41 CFR 60–2.1 is amended to read as follows:

§ 60–2.1 Title, purpose and scope.

(a) This part shall also be known as "Revised Order No. 4" and shall cover nonconstruction contractors. The provisions of this part also shall apply to the nonconstruction employees of a construction contractor with 50 or more nonconstruction employees and one or more contracts totaling $50,000 or more during any 12-month period. Section 60–1.40 of this chapter, requires that within 120 days from the commencement of a contract each contractor with 50 or more employees and (1) a contract of $50,000 or more; or (2) one or more contracts or Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (3) which is a financial institution which (i) serves as a depository of Government funds in any amount; (ii) acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount; or (iii) subscribes to Federal deposit insurance, shall develop, implement and maintain a written affirmative action program for each of its establishments. This part sets forth guidelines to be used by contractors and the OFCCP in developing and judging written affirmative action programs as well as the good faith effort required to transform these programs from paper commitments to equal employment opportunity.

(b) Relief, including back pay, where appropriate, for members of an affected class or individuals who by virtue of past discrimination continue to suffer the present effects of that discrimination, shall be provided in the conciliation agreement entered into pursuant to 41 CFR 60–1.26 of this chapter. An affected class problem must be remedied before a contractor may be considered in compliance. Section 60–2.2 of this part pertaining to an acceptable affirmative action program also is applicable to a contractor's failure to remedy discrimination against members of an affected class.

24. 41 CFR 60–2.2 is amended to read as follows:

§ 60–2.2 Requirements for contractors.

Any contractor required by 41 CFR 60–1.40 of this chapter to develop an affirmative action program at each of its establishments which has not complied fully with that section is not in compliance with the Order. Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.32 of this part, the contractor is unable to comply fully with the Order. An affirmative action program shall be deemed to have been accepted by OFCCP at the time the appropriate OFCCP area, regional or national office has accepted such program unless within 45 days thereafter the Director has disapproved such program. The intention of 41 CFR 60–1.40 and this part is that each contractor establishment will be covered by a written affirmative action program and that all the contractor's employees will be included in an

affirmative action program regardless of where they work.

25. A new 41 CFR 60–2.3 is added to read as follows:

§ 60-2.3 Submission of affirmative action programs and support data.

(a) The contractor shall submit the affirmative action program and supporting documentation within 15 days of receipt of a request from OFCCP. The affirmative action program shall contain a workforce analysis, a utilization analysis and goals and timetables, if applicable. Supporting documentation refers to the required contents of Affirmative Action Programs, as set forth in Subpart B of this part, and Methods of Implementing the Requirements of Subpart B, set forth in Subpart C of this part.

(b) The contractor shall submit the affirmative action program and supporting documentation upon OFCCP's request when a complaint is being investigated or a preaward compliance review is being conducted.

(c) The contractor in accordance with 41 CFR 60–1.43, shall provide full access to and copies of all relevant information and data for the on-site phase of the review.

(d) The contractor shall provide, for off-site review, all data or information determined by the compliance officer to be necessary to analyze more fully alleged deficiencies or violations before a determination of compliance is made.

(e) If a contractor fails or refuses to submit its affirmative action program and supporting documentation or other information as required by paragraphs (a), (b), (c) and (d) of this section, enforcement proceedings authorized by this chapter may be initiated against the contractor after appropriate conciliation efforts have been attempted, without issuing a show cause notice or notice of violations.

PART 60-20—SEX DISCRIMINATION GUIDELINES

26. 41 CFR 60–20.2 is amended to read as follows:

§ 60-20.2 Recruitment and advertisement.

(a) Contractors engaged in recruiting activity shall recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisements in newspapers and other media for employment sponsored by or on behalf of contractors shall not depict, express a preference, or indicate that a particular sex is sought, desired or better suited for a particular job unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "Male" or "Female", or similar wording, will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

27. 41 CFR 60–20.4 is amended to read as follows:

§ 60-20.4 Seniority systems.

Where they exist, seniority lines and lists must not be based upon sex. Where such a separation has existed, the contractor must eliminate this distinction and provide appropriate relief.

28. 41 CFR 60–20.5 is amended to read as follows:

§ 60-20.5 Discriminatory wages and placements.

(a) *Wages.* The contractor's wage schedules must not be related to or based on the sex of the employees.

While the more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions, compensation practices with respect to any jobs where males or females are substantially underutilized will be scrutinized closely to assure that sex has played no role in the setting of levels of pay.

(b) *Placements.* The Contractor may not discriminatorily restrict one sex to certain jobs. In such a situation, the contractor shall provide appropriate relief and shall ensure that all jobs are made available to all qualified employees without regard to sex. (Example: An electrical manufacturing company may have a production division with three functional units: One (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage attainable in the assembly unit is considerably less than that in the circuit board and wiring units. In such a case the contractor must take steps to provide qualified female employees opportunity for placement in job openings in the other two units.)

29. 41 CFR 60–20.6 is amended to read as follows:

§ 60-20.6 Affirmative action.

(a) Women typically have not been found in significant numbers in management. In many companies management trainee programs are one of the ladders to management positions. Traditionally, few, if any women have been admitted into these programs. An important element of affirmative action shall be a commitment to include female candidates in such programs.

(b) Distinctions based on sex may not be made in other training programs. Both sexes should have equal access to all training programs and affirmative action programs should require a demonstration by the contractor that such access has been provided.

(c) The contractor shall take affirmative action to recruit women for jobs in which they previously have been excluded or are underrepresented. The contractor also shall take affirmative action to encourage the participation of women in training programs for jobs in which they have been previously excluded or are underrepresented.

Note.—This can be done by various methods. Examples include: (1) Including in itineraries of recruiting trips, women's colleges where graduates with skills desired by the contractor can be found, and female students of coeducational institutions and (2) designating advertisements to indicate that women will be considered equally with men for jobs.

30. 41 CFR 60–20.3(g) (1) and (2) are deleted and 41 CFR 60–20.3(h) is renumbered 41 CFR 60–20.3(g). A new 41 CFR 60–20.7 is added to include the provisions relating to maternity leave (presently codified in 41 CFR 60–20.3(g) (1) and (2)) which reads as follows:

§ 60-20.7 Pregnancy, childbirth and related medical conditions.

(a) Employees or applicants for employment shall not be denied employment because of pregnancy, childbirth or related medical conditions.

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer

from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Order if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of § 60–20.7(b) by April 29, 1979. In order to come into compliance with the provisions of § 60–20.7(b) there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979, or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of § 60–20.7(b) upon implementation.

31. 41 CFR Part 60–20 is amended by adding a new 41 CFR 60–20.8 which reads as follows:

§ 60–20.8 Sexual advances and favors.

(a) It shall be a violation of the Order, for an official or supervisor who is authorized to recommend or take personnel actions affecting employees to (1) Use official authority in making sexual advances toward employees over whom the official or supervisor is authorized to make or recommend personnel actions; (2) grant, recommend, or refuse to take any personnel action because of sexual favors; and (3) take or fail to take a personnel action as a reprisal against an employee for rejecting or reporting a sexual advance.

(b) It also shall be a violation of the Order if a contractor knows or should have known of one or more of the violations set forth in § 60–20.8(a) and fails to take appropriate corrective action.

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

32. 41 CFR 60–30.1 is amended to read as follows:

§ 60–30.1 Applicability of rules.

This part provides the rules of practice for all administrative proceedings, instituted to enforce equal employment opportunity under Executive Order 11246, section 402 of the Vietnam Era Veterans Readjustment Assistance Act and section 503 of the Rehabilitation Act. In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.

33. 41 CFR 60–30.3 is amended to read as follows:

§ 60–30.3 Computation of time.

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government in which event it includes the next business day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

34. 41 CFR 60–30.4 is amended to read as follows:

§ 60–30.4 Form, filing, service of pleadings and papers.

(a) *Form.* The original of all pleadings and papers in a proceeding conducted under the regulations in this part shall be filed with the Administrative Law Judge assigned to the case or with the Chief Administrative Law Judge if the case has not been assigned. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case file number assigned by the Administrative Law Judge, and a designation of the pleading or paper (e.g., complaint, motion to dismiss, etc.). The pleading or papers shall be signed and shall contain the address and telephone number of the person representing the party or the person on whose behalf the pleading or paper was filed. Unless the Administrative Law Judge otherwise orders with respect to specific pleadings and papers in a specific case, all such papers and pleadings are public documents.

(b) *Service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy to the party or by mailing a copy to the party's last known address. When a party is represented by an attorney, service shall be made upon the attorney.

(c) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of service shall be proof of service.

35. 41 CFR 60–30.5 (b) and (c) are amended to read as follows:

§ 60–30.5 Administrative complaint.

* * * * *

(b) *Contents.* The complaint shall contain a concise jurisdictional statement, and a clear and concise statement sufficient to put the defendant on notice of the acts or practices it is alleged to have committed in violation of the Order, the regulations, or its contractual obligations. The complaint shall also contain a prayer regarding the relief being sought, a statement of whatever sanctions the Government will seek to impose and the name and address of the attorney who will represent the Government. The notice pleading contemplated by this paragraph (b) shall conform to notice pleading under the Federal Rules of Civil Procedure.

(c) *Amendment.* The complaint may be amended once as a matter of course before an answer is filed, and the defendant may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the complaint or of the answer to the complaint shall be made only by leave of the Administrative Law Judge or by written consent of the adverse party; and leave shall be freely given where justice so requires. An amended complaint shall be answered within 14 days of its service, or within the time for filing an answer to the original complaint, whichever period is longer. If a response is required to an amended answer, such response shall be made within 14 days of service of the amended answer.

36. 41 CFR 60–30.7 is amended to read as follows:

§ 60–30.7 Notice of prehearing conference.

The Administrative Law Judge shall respond to defendant's request for a hearing within 15 days. The Administrative Law Judge shall notice the parties for a prehearing conference at least 45 days after the answer is filed, and shall conduct a final prehearing conference in accordance with § 60–30.12(c)(1) of this part.

37. 41 CFR 60–30.8 is amended by amending § 60–30(b) and adding a new § 60–30(c) to read as follows:

§ 60–30.8 Motions; disposition of motions.

* * * * *

(b) *Disposition of motions.* The Administrative Law Judge may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties following a hearing, but may overrule or deny such motion without awaiting response. The Administrative Law Judge

shall make every reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing: *Provided,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions.

(c) *Motions to compel discovery.* Prior to filing a motion to compel discovery under sections 60–30.9 through 60–30.11 of this part, counsel for the moving party shall communicate with opposing counsel concerning the matter in dispute. Counsel for the moving party shall file with the motion a certificate of compliance with this rule.

38. 41 CFR 60–30.9 is amended by amending subsection 60–30.9(a) and by adding a new subsection (d) to read as follows:

§ 60–30.9 Interrogatories, and admissions as to facts and documents.

(a) *Interrogatories.* Not later than 25 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party written interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless objected to. Answers are to be signed by the person making them, and objections by the attorney or by whomever is representing the party. Answers and objections shall be filed and served within 25 days of service of the interrogatory. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

* * * * *

(d) *Filing with Administrative Law Judge.* All interrogatories and requests for admissions, and all responses thereto, shall be filed with the Administrative Law Judge and shall become a part of the record of the case.

39. 41 CFR 60–30.11(c) is amended to read as follows:

§ 60.30.11 Depositions upon oral examination.

* * * * *

(c) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to adminster oaths by the laws of the United States or of the place where the deposition is held.

At the time and place specified in the notice, each party shall be permitted to examine and cross-examine the witness under oath upon any matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions and to evidence shall be noted on the record and shall be reserved until the hearing. Taking of the deposition shall not be interrupted to resolve objections. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the Administrative Law Judge or the Adminsitrative Law Judge rules that there was valid justification for the witness' failure or refusal to answer the question: *Provided,* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his/her intention to invoke the presumption if no answer is forthcoming.

40. 41 CFR 60–30.12 is amended to read as follows:

§ 60–30.12 Prehearing conferences.

(a) Upon his/her own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him/her for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulation, admissions of fact and contents and authenticity of documents;

(4) Limitation of number of witnesses;

(5) Scheduling dates for the exchange of witness lists and of proposed exhibits; and

(6) Such other matters as may tend to expedite the disposition of the proceedings.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

(c)(1) A final prehearing conference shall be scheduled by the Administrative Law Judge a reasonable time in advance of the hearing to develop a prehearing order. The prehearing order shall contain any matters described in subparagraph (a) of this section agreed upon by the parties or ordered by the Administrative Law Judge. The prehearing order also shall contain the factual and legal contentions of the parties.

(2) Witness lists and hearing exhibits shall be exchanged at least 10 days in advance of the hearing, or such other later time as is set by the Administrative Law Judge. Each party should provide to all other parties copies of all exhibits that it then plans to use at the hearing or, in the case of voluminous documents, it shall permit other parties to make copies of such documents.

(3) All discovery should be concluded at least 30 days prior to the hearing or by such other later time as ordered by the Administrative Law Judge for good cause shown. Administrative Law Judges, however, shall allow adequate time for discovery.

41. 41 CFR 60–30.15 is amended to read as follows:

§ 60–30.15 Authority and responsibilities of Administrative Law Judges.

The Administrative Law Judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He/she shall have all powers necessary to those ends, including but not limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his/her own motion;

(b) Require parties to state their position with respect to the various issues in the proceedings;

(c) Require parties to produce for examination those relevant witnesses and documents under their control; and require parties to answer interrogatories and requests for admissions in full;

(d) Administer oaths;

(e) Rule on Motions, and other procedural items or matters pending before him/her;

(f) Regulate the course of the hearing and conduct of participants therein;

(g) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(h) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him/her and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing designated matters into evidence;

(2) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him/her; and

(3) Expelling any party or person from further participation in the hearing;

(4) Invoking a presumption that the answers or actions ordered if made, would be unfavorable or adverse to the party ordered to answer or act.

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the defendant violated the Order, section 402 or section 503, as well as the nature of the relief necessary to ensure the full enjoyment of the rights secured by the Order, section 402 or section 503;

(m) Issue subpenas; and

(n) Render interlocutory decisions for the Department of Labor in preliminary enforcement proceedings under § 60–30.38; and

(o) Take any action authorized by these rules.

42. 41 CFR 60–30.18 is amended to read as follows:

§ 60–30.18 Evidence; testimony.

Formal rules of evidence shall not apply, but rules or principles, including the Federal Rules of Evidence, designed to assure production of the most probative evidence available shall be applied. Testimony shall be given orally by witnesses at the hearing. Testimony taken by deposition may be introduced into evidence pursuant to § 60–30.11, in lieu of testimony given at the hearing, in the discretion of the Administrative Law Judge. A witness shall be available for cross-examination, and, at the discretion of the Administrative Law Judge, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

43. 41 CFR 60–30.19(c) is amended to read as follows:

§ 60–30.19 Objections; exceptions; offer of proof.

* * * * *

(c) *Offer of proof.* An offer of proof made in connection with an objection taken to any ruling excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof. The offer of proof should clearly and specifically indicate the significance of the excluded evidence, unless the substance is apparent from the context.

44. 41 CFR 60–30.30 is amended to read as follows:

§ 60–30.30 Final administrative order.

After expiration of the time for filing exceptions, the Secretary or the Under Secretary, in the absence of the Secretary or if the Secretary disqualifies himself or herself for any reason, shall make a final Administrative Order which shall be served on all parties. If the Secretary concludes that the defendant has violated the Order, section 402 or section 503, an Administrative Order shall be issued which shall enjoin the violations, and require the contractor to provide whatever remedies are appropriate, and which shall impose whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate termination and suspension of the defendant's contracts and/or debarment of the defendant from further contracts: *Provided,* That the portion of any order under Executive Order 11246 terminating, cancelling, or suspending contracts shall not become effective until the consultation requirements of section 209(a)(5) of the Order, as amended by Executive Order 12086, have been satisfied.

45. A new 41 CFR 60–30.38 is proposed to be added as follows:

§ 60–30.38 Preliminary administrative enforcement proceedings.

(a) A preliminary enforcement proceeding is commenced by filing an administrative complaint. (See 41 CFR 60–1.29(e).) An Administrative complaint may combine general allegations and prayers for relief and sanctions or it may be limited to preliminary relief and sanctions. In the event an administrative complaint seeks preliminary and general enforcement, the allegations relating to preliminary enforcement shall be so designated and stated separately in the complaint.

An administrative complaint which is limited to preliminary relief and sanctions may be amended in accordance with 41 CFR 60–30.5(c) to make general allegations of violations and to request general relief and sanctions.

(b) The administrative complaint, as it relates to preliminary enforcement proceeding issues, shall contain a clear and concise factual statement sufficient to inform the defendant with reasonable definiteness of the acts and practices it is alleged to have committed which constitute a violation. That is, fact pleading rather than notice pleading which obtains under § 60–30.5 of this part, shall apply to preliminary enforcement proceeding issues. The complaint also shall contain a statement of any relief being sought and/or any sanctions which are sought to be imposed.

(c) No answer, as required by 41 CFR 60–30.6 of this part, shall be required with respect to the issues in the complaint which seek preliminary enforcement proceedings. However, the Administrative Law Judge shall notify the parties of the time and place of the hearing within 10 days after the complaint is filed.

(d) The plaintiff shall submit with the administrative complaint any affidavits and other documentation and a supporting memorandum. The defendant shall have 15 days after service of the complaint to submit any affidavits and other documentation and supporting memorandum.

(e) The Administrative Law Judge is authorized to conduct any prehearing conferences or procedures to expedite the hearing process.

(f) Discovery in a preliminary enforcement proceeding shall be granted only upon leave of the Administrative Law Judge for compelling reasons.

(g) The preliminary administrative enforcement proceeding is intended to provide a speedy hearing and decision on limited issues, and the Administrative Law Judge shall take all measures consistent with these rules and procedural fairness to achieve this end. The hearing shall commence within 20 days of the notice of hearing specified in 41 CFR 60–30.38(c).

(h) The decision of the Administrative Law Judge shall be issued within 10 days after the conclusion of the hearing. The decision shall not be delayed either

to await the preparation of a transcript or post-hearing submissions by the parties. The decision shall set forth findings of fact and conclusions of law on the issues presented, including the imposition of sanctions.

(i) The Administrative Law Judge's decision and order shall constitute the decision of the Department of Labor with respect to any preliminary issue concerning the contractor's responsibility to perform its contractual EEO obligations and its eligibility for the award of further contracts during the pendency of administrative proceedings. That decision shall not be subject to administrative review. If the contractor's practices are found to be in substantial violation, the Administrative Law Judge shall determine either that the contractor is ineligible for the award or contracts during the pendency of administrative proceedings or under what circumstances the contractor will be eligible for the award of contracts during the pendency of the administrative proceedings. For all other issues and all other relief or sanctions, the Administrative Law Judge shall recommend findings, conclusions and a decision which together with the record shall be referred to the Secretary for a final administrative order in accordance with § 60–30.30 of this part. The parties may submit exceptions to such recommendations in accordance with § 60–30.28 of this part.

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

46. 41 CFR 60–50.1(b) is amended to read as follows:

§ 60–50.1 Purpose and scope.

* * * * *

(b) Members of various religious and ethnic groups continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

* * * * *

47. No amendments for religious accommodation are proposed at this time. On September 15, 1979, EEOC published proposed Guidelines on Discrimination Because of Religion for a 90-day comment period. These Guidelines were coordinated with OFCCP under Executive Order 12067. OFCCP therefore will postpone rulemaking on the accommodation of religious practices until the EEOC Guidelines are made final, and determine at that time whether to publish a final rule based on the EEOC Guidelines.

PART 60–60 [DELETED]

47A. 41 CFR Part 60–60 is deleted.

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

§ 60–250.2 [Reserved]

48. 41 CFR 60–250.2 is deleted, and the definitions presently contained in this section have been written into 41 CFR 60–1.3. The section number (41 CFR 60–250.2) is reserved.

49. 41 CFR 60–250.5 is amended to read as follows:

§ 60–250.5 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract, every Government contractor which has 50 or more employees and (1) has a contract of $50,000 or more or (2) has one or more contracts (at least one of which is at least $10,000) which total $50,000 or more in any 12 month period shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with § 60–250.6 of this part. This program may be integrated into or kept separate from other affirmative action programs of the contractor which OFCCP requires it to maintain pursuant to this chapter. Contractors presently holding Government contracts shall update their affirmative action programs within 120 days of the effective date of this part.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c) The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

(d) The contractor shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Act, and regulations in this part. If an applicant or employee so identifies himself or herself, the contractor should also seek the advice of the applicant or employee regarding proper placement and appropriate accommodation (an acceptable form for such an invitation is set forth in appendix A attached). Nothing in this section shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this section shall relieve a contractor from liability for discrimination under the Act.

50. 41 CFR 60–250.7 is amended to read as follows:

§ 60–250.7 Determination of disability.

Any disabled veteran filing a complaint under this part shall submit documentation from the Veterans Administration or military service from which the person was discharged or released which indicates the disability. Such documentation shall be updated within one year prior to filing the complaint.

§§ 60–250.8 and 60–250.9 [Deleted]

51. 41 CFR 60–250.8, and 60–250.9 are deleted.

§ 60–250.21 [Redesignated from § 60–250.24]

§ 60–250.24 [Redesignated as § 60–250.21]

52. 41 CFR 60–250.21, 60–250.22 and 60–250.23 are deleted. 41 CFR 60–250.24 is renumbered 41 CFR 60–250.21. 41 CFR 60–250.25 is renumbered 41 CFR 60–250.22 and is amended to read as follows:

§ 60–250.22 Evaluations by the OFCCP Assistant Regional Administrators.

The Assistant Regional Administrators, OFCCP, shall be primarily responsible for undertaking compliance reviews and investigations of complaints against contractors as may be necessary to assure that the purposes of the Act are being carried out effectively.

53. 41 CFR 60–250.26 is renumbered 41 CFR 60–250.23 and is amended to read as follows:

§ 60–250.23 Complaint procedures.

(a) *Filing complaints.* Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended for good cause shown.

(b) *Where to file.* Complaints may be filed with the OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or with

any OFCCP regional or area office. Complaints also may be filed with the Veterans Employment Service of the Department of Labor. Complaints filed with the Veterans Employment Service shall be referred to OFCCP promptly for investigation.

(c) *Contents of complaints.* Complaints must be signed by the complainant or an authorized representative and must contain the following information: (1) name and address (including telephone number) of the complainant; (2) name and address of the contractor who committed the alleged violation; (3) a description of the act or acts considered to be a violation; (4) a statement that he/she is a disabled or Vietnam era veteran; and (5) any other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met. Signed third party complaints which do not identify the complainant will be accepted, whether or not signed by the authorized representative provided that the other information required by this paragraph is included.

(d) *Incomplete information.* If a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished within 60 days of the date of the request, the case may be closed.

(e) *Investigations.* The OFCCP shall institute a prompt investigation of each complaint, and shall be responsible for developing a complete case record.

(f) *Referral to contractor.* When a complaint is filed by an employee of a contractor and the contractor has an applicable internal review procedure, the complaint may be referred to the contractor for processing under that procedure if the employee gives his/her consent. The contractor shall be informed of the elements of the complaint either by furnishing a copy or a sanitized version. The complaint and all actions taken thereunder shall be kept confidential by the contractor. If the contractor is able to resolve the complaint to the satisfaction of the complainant prior to the OFCCP investigation, the contractor shall notify OFCCP of the results in writing. The case will be closed upon verification with the complainant.

(g) *Resolution of matters.* (1) If the complaint investigation shows no violation of the Act or regulations, or if the matter is not recommended to the Office of the Solicitor for legal enforcement proceedings, the matter shall be closed and the complainant shall be so notified.

(2) If an investigation indicates that the contractor has not complied with the requirements of the Act, efforts shall be made to secure compliance through concilation and persuasion within a reasonable time. Before the contractor or subcontractor can be found to be in compliance, it must make a specific commitment in accordance with the procedure in 41 CFR 60–1.26.

(3) If a complaint investigation or compliance review indicates a violation of the Act, and the matter has not been resolved by informal means, OFCCP may refer the matter in accordance with the procedure in 41 CFR 60–1.29(a) for consideration of any action authorized under 41 CFR 60–1.29. After a matter arising under the Act is referred to the Office of the Solicitor, the provisions of 41 CFR 60–1.29 through 60–1.31 shall be applicable to it in the same way those provisions apply to a matter arising under Executive Order 11246.

§§ 60–250.27—60–250.32 [Deleted]

54. 41 CFR 60–250.27, 60–250.28, 60–250.29, 60–250.30, 60–250.31 and 60–250.32 are deleted.

55. 41 CFR 60–250.33 is moved to Subpart C, is redesignated 41 CFR 60–250.30 and is amended to read as follows:

§ 60–250.30 Responsibilities of the Deputy Assistant Secretary for Veterans' Employment.

(a) In accordance with the provisions of 38 U.S.C. 2002A, the Deputy Assistant Secretary for Veterans' Employment (DASVE) has responsibilities in all Department of Labor employment programs for veterans. The DASVE shall monitor and evaluate the mandatory job listing provisions of 41 CFR 60–250.4 in the regular course of evaluations of state employment service offices by the Veterans Employment Service. Deficiencies noted by the employment service shall be reported through the DASVE, to OFCCP. OFCCP, in coordination with the DASVE, will continue to review the mandatory job listing requirements by contractors in the course of regularly scheduled compliance reviews.

(b) Any job openings listed pursuant to § 60–250.3, which requires contractors to list their job openings with state employment services offices, shall be utilized by state employment security agencies to refer qualified disabled veterans and veterans of the Vietnam era.

(c) The local offices of the Federal-state employment service shall give priority in referral of disabled veterans and veterans of the Vietnam era to such employment openings listed by contractors and subcontractors pursuant to this part.

(d) The local employment office staff will contact employers to solicit job orders. The state employment service will make available information pertinent to a determination of whether the contractor is in compliance with the mandatory listing and reporting requirements of the affirmative action clause.

§§ 60–250.50 and 60–250.51 [Deleted]

56. 41 CFR 60–250.50 and 60–250.51 are deleted.

57. 41 CFR 60–250.52 is redesignated 41 CFR 60–250.31 and is amended to read as follows:

§ 60–250.31 Recordkeeping.

(a) Each contractor shall maintain for a period not less than one year records regarding complaints and actions taken thereunder, and such employment or other records as required by the Director or by this part and shall furnish such information in the form required by the Director or as the Director deems necessary for the administration of the Act.

(b) Failure to maintain complete and accurate records as required under this section or failure to update annually the affirmative action program as required by § 60–250.5(b) constitutes noncompliance with the contractor's obligations under the Act and is a ground for the imposition of appropriate sanctions.

§§ 60–250.53 and 60–250.54 [Deleted]

58. 41 CFR 60–250.53 and 60–250.54 are deleted.

PART 741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

59. 41 CFR 60–741.5 is amended to read as follows:

§ 60–741.5 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract, every Government contractor which has 50 or more employees and (1) has a contract of $50,000 or more or (2) has one or more contracts (at least one of which exceeds $2,500) which total $50,000 or more in any 12-month period shall prepare and maintain an affirmative action program

at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with § 60–741.6 of this part. This program may be integrated into or kept separate from other affirmative action programs of the contractor which OFCCP requires it to maintain pursuant to this chapter. Contractors presently holding Government contracts shall update their affirmative action programs within 120 days of the effective date of this part.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c)(1) The contractor shall invite all applicants and employees who believe themselves covered by the Act and who wish to benefit under the affirmative action program to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Act and the regulations in this part. If an applicant or employee so identifies himself or herself, the contractor should also seek the advice of the applicant or employee regarding proper placement and appropriate accommodation. (An acceptable form for such an invitation is set forth in Appendix B attached.)

(2) Nothing in this section shall preclude an employee from informing a contractor at any future time of his or her desire to benefit under the program.

(3) Nothing in this section shall relieve a contractor of its obligation to take affirmative action with respect to those applicants or employees of whose handicap the contractor has actual knowledge: *Provided,* That the contractor is not obligated to search the medical files of any applicant or employee to determine the existence of a handicap.

(4) Nothing in this section shall relieve a contractor from liability for discrimination under the Act.

(d) The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–741.2 [Deleted]

60. 41 CFR 60–741.2 is deleted, and the definitions presently contained in this section have been written into 41 CFR 60–1.3. The section number (41 CFR 60–741.2) is reserved.

§ 60–741.9 [Deleted]

61. 41 CFR 60–741.9 is deleted.

§ 60–741.21 [Redesignated from § 60–741.24]

§ 60–741.24 [Redesignated from § 60–741.21]

62. 41 CFR 60–741.21, 60–741.22 and 60–741.23 are deleted. 41 CFR 60–741.24 is renumbered 41 CFR 60–741.21. 41 CFR 60–741.25 is renumbered 41 CFR 60–741.22 and is amended to read as follows:

§ 60–741.22 Evaluations by the OFCCP Assistant Regional Administrator.

The Assistant Regional Administrators, OFCCP, shall be primarily responsible for undertaking such investigations of complaints against contractors and conducting compliance reviews as may be necessary to assure that the purposes of the Act are being carried out effectively.

63. 41 CFR 60–741.26 is renumbered 41 CFR 60–741.23 and is amended to read as follows:

§ 60–741.23 Complaint procedures.

(a) *Filing complaints.* Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended for good cause shown.

(b) *Where to file.* Complaints may be filed with the OFCCP, 200 Constitution Avenue, N.W., Washington, D.C., 20210, or with any OFCCP regional or area office.

(c) *Contents of complaints.* Complaints must be signed by the complainant or an authorized representative and must contain the following information: (1) Name and address (including telephone number) of the complainant; (2) name and address of the contractor who committed the alleged violation; (3) a description of the act or acts considered to be a violation; (4) a statement that the individual is handicapped, has a history of a handicap, has documentation of impairment, or was regarded by the contractor as having an impairment; and (5) any other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met. Signed third party complaints which do not identify the complainant will be accepted, whether or not signed by the authorized representative provided that the other information required by this paragraph is included.

(d) *Incomplete information.* If a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished within 60 days of the date of the request, the case may be closed.

(e) *Investigations.* The OFCCP shall institute a prompt investigation of each complaint, and shall be responsible for developing a complete case record.

(f) *Referral to contractor.* When a complaint is filed by an employee of a contractor and the contractor has an applicable internal review procedure, the complaint may be referred to the contractor for processing under that prodecure if the employee gives his/her consent. The contractor shall be informed of the elements of the complaint either by furnishing a copy or a sanitized version. The complaint and all actions taken thereunder shall be kept confidential by the contractor. If the contractor is able to resolve the complaint to the satisfaction of the complainant prior to the OFCCP investigation, the contractor shall notify OFCCP of the results in writing. The case will be closed upon verification with the complainant.

(g) *Resolution of matters.* (1) If the complaint investigation shows no violation of the Act or regulations in this part, or if the matter is not referred to the Office of the Solicitor for consideration of legal enforcement proceedings, the matter shall be closed and the complainant shall be so notified.

(2) If an investigation indicates that the contractor has not complied with the requirements of the Act, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the contractor or subcontractor can be found to be in compliance, it must make a specific commitment in accordance with the procedure in 41 CFR 60–1.26.

(3) When a complaint investigation or compliance review indicates a violation of the Act, and the matter has not been resolved by informal means, OFCCP may refer the matter in accordance with the procedure in 41 CFR 60–1.29(a) for consideration of any action authorized under 41 CFR 60–1.29. After a matter arising under the Act is referred to the Office of the Solicitor, the provisions of 41 CFR 60–1.29 through 60–1.31 shall be applicable to it in the same way those provisions apply to a matter arising under Executive Order 11246.

§§ 60-741.27—60-741.32 [Deleted]

64. 41 CFR 60-741.27, 60-741.28, 60-741.29, 60-741.30, 60-741.31 and 60-741.32 are deleted.

§§ 60-741.50 and 60-741.51 [Deleted]

65. 41 CFR 60-741.50 and 60-741.51 are deleted.

66. 41 CFR 60-741.52 is redesignated 41 CFR 60-741.30, and is amended to read as follows:

§ 60-741.30 Recordkeeping.

(a) Each contractor shall maintain for a period not less than one year records regarding complaints and actions taken thereunder, and such employment or other records as required by the Director or by this part and shall furnish such information in the form required by the Director or as the Director deems necessary for the administration of the Act.

(b) Failure to maintain complete and accurate records as required under this section or failure to update annually the affirmative action program as required by § 60-741.5(b) constitutes noncompliance with the contrator's obligations under the Act and is a ground for the imposition of appropriate sanctions.

§§ 60-741.53 and 60-741.54 [Deleted]

67. 41 CFR 60-741.53 and 60-741.54 are deleted.

Authority: E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086; sec. 503, Pub. L. 93-1112, 87 Stat. 393 (20 U.S.C. 793), as amended by sec. 111, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706) and Executive Order 11758; sec. 503(a), Pub. L. 92-540, 86 Stat. 1097 (38 U.S.C. 2012), as amended by Sec. 402, Pub. L. 93-508, 88 Stat. 1593 (38 U.S.C. 2012).

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Part VII

Department of Labor

Wage and Hour Division, Employment Standards Administration

Procedure for Predetermination of Wage Rates

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule.

SUMMARY: This document is a proposal to reexamine and revise our procedures in Part 1 for predetermination of wage rates. The test for determining what constitutes a prevailing wage is clarified. In addition, there are clarifications of the use of wage determinations, modifications, and supersedeas wage determinations, and the necessary corrective action when an erroneous schedule of wage determinations (building, heavy, highway, residential) is included in bidding documents and contracts.

DATE: Comments must be received on or before February 26, 1980.

ADDRESS: Submit comments to: Mrs. Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Ave., N.W., Washington, D.C. 20210. Phone: (202) 523–8333.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Ave., N.W., Washington, D.C. 20210. Phone: (202) 523–8333.

SUPPLEMENTARY INFORMATION: The definition of "prevailing wage" in § 1.2(a) is changed under this proposal to explicitly include fringe benefits in the wage determination process, and to clarify treatment of differences in wages due solely to the time in which the wages are paid.

Although no changes are proposed in the current method of determining prevailing wages by surveying the number employed in each classification in the peak work week on each project, suggestions are invited regarding the advisability and feasibility of alternatives, such as surveying the total number of man-hours worked on similar projects in each classification or the number employed in each classification on similar projects in the area at a particular point in time, with consideration for the availability of wage rate data under the alternative methods.

The use of modifications of wage determinations has created problems. In many cases agencies have declined to use modifications on the basis that they were received later than 10 days before bid opening, even though it may have been feasible to notify bidders of the modification prior to bid opening. The proposed amendment to § 1.6 (formerly § 1.7) would require a contracting agency to use a modification unless it finds that there is not a reasonable time still available after receipt of the modification to notify bidders of the modification. Section 1.6 would also expressly state the intent of the Department of Labor that "modifications" to wage determinations are changes in the rates occasioned by updating of prevailing wage determinations to reflect current prevailing wage rates, as distinguished from a determination that an erroneous wage determination has been issued or utilized by the agency.

Additional problems have arisen from delay in awarding a contract after bid opening. General wage determinations (i.e., those published in the Federal Register) now have no expiration date. Accordingly, it is proposed that if the contract is not awarded within 60 days after bid opening, any modification published in the Federal Register prior to award of the contract shall be effective with respect to that contract unless the agency requests and obtains an extension from the Administrator.

From time to time problems have arisen because of use of wage rate schedules (e.g., building, heavy, highway, residential) not properly applicable to a project. Therefore a new subsection 1.6(f) is proposed which would provide that if the contract includes a schedule of rates which by its terms or the provisons of this part is not applicable to the work to be performed, or if an incorrect project wage determination is issued on the basis of an inaccurate description of the project or its location, the correct schedule is to be included in the contract by whatever means are apporpiate (such as supplemental or change order). See Comptroller General Opinion No. B–179871 (April 1, 1975), 75–1 CPD ¶189. Similarly, if a wage determination is erroneously omitted, it is to be included. These types of errors can be corrected at any time, and the 10-day rule applicable to modifications of wage determinations is inapplicable to such errors.

A new subsection 1.6(g) is also proposed to explain the application of wage determinations where federal assistance is not approved until after contract award or the start of construction.

Section 1.7 (formerly § 1.8) has been revised to clarify the scope of wage rate surveys where there is insufficient current construction in the county where the work is to be performed, and to incorporate in the regulations the Department's practice concerning issuance of classifications of laborers and mechanics, based upon differences in work performed, not skill or supervisory functions.

Provisions for wage determination hearings before Administrative Law Judges are proposed to be deleted because as a result of the time-consuming nature of such proceedings, hearings are no longer conducted, and more expedited appeals are available at the Wage Appeals Board,

All-Agency Memoranda Nos. 130 and 131 have been incorporated as an appendix to this part to provide clarification of the application of wage schedules.

Other changes are minor and largely editorial in nature.

It has been determined that the proposed amendments to these regulations do not warrant preparation of a regulatory analysis within the meaning of Executive Order 12044 and the Department of Labor's guidelines (44 FR 5570).

Accordingly, it is proposed to revise Part 1 as set forth below.

Signed at Washington, D.C., on this 21st day of December, 1979.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

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Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a—276a–7) and other statutes listed in Appendix A to this part which provide

for the payment of minimum wages, including fringe benefits to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in the Appendix A, any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, and such other statutes as may, from time to time, confer upon the Secretary of Labor similar wage determining authority.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the Federal Register for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a) The term "wages" (and its singular form) has the meaning prescribed in section 1(b) of the Davis-Bacon Act (40 U.S.C. 276a(b)). It includes the basic hourly rate of pay and the rate of contributions or payments for bona fide fringe benefits.

(1) A "wage" shall be deemed to be the "prevailing wage" if it is the wage (hourly rate of pay and fringe benefits) paid to the greatest number of laborers or mechanics in the classification on similar projects in the area during the period in question, *provided* that the wage is paid to at least 30% of those employed in the classification. If the same wage (hourly rate of pay and fringe benefits) is not paid to at least 30% of those employed in the classification during the period in question, the "prevailing wage" shall be deemed to be the average of the basic hourly rates of pay plus the average of the rates of contributions or payments for bona fide fringe benefits, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3(b) of this part. In applying paragraph (a)(1), where differences in wages paid during the period in question are due solely to the point in time at which the wages were paid, wages paid at the earlier point in time will be considered to have been paid at the current wage.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under the Federal-Aid Highway Act of 1956, as amended, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage rate determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area.

The Administrator will also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid.

(b) The following types of information will be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to prevailing wage legislation.

(4) Information furnished by Fedal and State agencies. See § 1.5. In making wage rate determinations pursuant to Federal-Aid Highway Acts as codified in 23 U.S.C. 113, the highway department of the State in which a project in the Interstate System is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted by the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator will supplement such information obtained on a voluntary basis by such means and from whatever sources are determined to be necessary. All information of the types described in § 1.3(b) of this Part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed

[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the immediate locality.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his discretion, may publish a general wage determination in the Federal Register when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor.

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. If it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency should request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award (or the start of construction) but after bid opening (or initial endorsement or the execution of the agreement to enter into a housing assistance payments contract, as appropriate), the agency may, in addition to requesting a new wage determination, request the Administrator to extend the expiration date of the wage determination in the bid specifications. Such request shall be supported by a written finding (which shall include a brief statement of the factual support for the finding) by the head of the agency that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the Federal Register, shall contain no expiration date.

(b) Application of general wage determinations to projects and application of project wage determinations with more than one wage rate schedule shall be in accordance with Memoranda Nos. 130 and 131 contained in Appendix C of this part. Any question regarding application of wage rate schedules or the guidelines contained in Memoranda Nos. 130 and 131 shall be referred to the Administrator for resolution.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which repleaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency later than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available to notify bidders of the modification and a report of the finding is sent to the Administrator. No such report shall be required after bid opening.

(B) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, which ever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing

assistance payments contract is executed, whichever occurs first.

(ii) Modificatons to project wage determinations and supersedeas wage determinations shall not be effective after contract award, or after the beinning of construction, as appropriate.

(iii) Actual notice of a modification (written or oral) shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published later than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available to notify bidders of the modification and a report of the finding is sent to the Administrator. No such report shall be required after bid opening.

(ii) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 60 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 60 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the Federal Register prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the agency requests and obtains an extension of the 60-day period from the Administrator. Such request shall be supported by a written finding (which shall include a brief statement of the factual support for the finding) by the head of the agency that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the Federal Register, or on the date the agency receives actual notice (written or oral) of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award or after the beginning of construction, as appropriate, shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination included in a contract whenever the Administrator finds such a wage determination contains clerical errors.

(e) Notification (written or oral) by the Department of Labor prior to the award of a contract (or the start of construction where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule of craft classifications and rates in a wage determination, or that (2) a wage determination is withdrawn because the Department of Labor has determined that it is erroneous (as distinguished from no longer current), shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that an erroneous wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances; the agency is to incorporate the valid wage determination in the contract specifications retroactively to the date of award, or the beginning of construction, as appropriate. This should be done by whatever means the agency deems appropriate, including, for example, terminating and resoliciting the contract, or amending the contract through supplemental agreement or through change order.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award or the beginning of construction, as appropriate, the agency shall request a wage determination prior to approval of such funds, which shall be incorporated in the contract specifications retroactively to the date of award or the beginning of construction, as appropriate, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination, although multi-county wage determinations may be issued where the prevailing wages are substantially the same.

(b) If there has not been sufficient similar construction to make a wage determination within the area in the past year, wages paid on similar construction in surrounding counties may be considered, *provided* that projects in metropolitan counties will not be used as a source of data for a wage determination in a rural county, and projects in rural counties will not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage and fringe benefit rates will be issued only for identifiable "classes of laborers and mechanics." Distinctions between classifications are based upon differences in the work performed, not

upon skill and supervisory functions. A semi-skilled classification of laborers or helpers, for example, is issued when the classification as utilized in the area performs a scope of duties which distinguishes it from other classifications in the area. Prevailing wages for apprentices and trainees are not issued on wage determinations, but their use is permitted in accordance with § 5.5(a)(4) of part 5.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

Appendix A

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1–7, 46 Stat. 1494, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113(a), as amended), see particularly the amendments in the Federal-Aid Highway Act of 1963 (Pub. L. 90–495, 62 Stat. 815).

11. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970. (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assitance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservaion Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4).

Note.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of this part but not in the United States Code).

Appendix B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617–223–5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212–399–5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone 215–596–1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404–881–4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312–353–7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214–767–6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816–374–5388).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304–837–4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415–556–3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206–442–1916).

Appendix C

All Agency Memorandum No. 130
To: All Government Contracting Agencies and the District of Columbia
From: Xavier M. Vela, Administrator
Subject: Application Of The Standard Of Comparison "Projects Of A Character Similar" Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth present policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedules(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1956).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. 76–11, dated January 27, 1977) stated:

The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid.

Again, in a decision relating to a water treatment plant project (WAB Case No. 77–20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Generally construction projects are classified as either Building, Heavy, Highway or Residential.[1] Below are descriptions of these classifications with an illustrative listing of the kinds of projects that are generally included within the classification. Contracting agencies should utilize these descriptions and illustrations in carrying out their responsibilities, to insure a uniform and consistent administration of the Davis-Bacon and related prevailing wage statutes. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply. Note, however, that the descriptions and illustrations are guides. Contracting agencies should seek a determination from the Department of Labor on close questions or when the appropriate classification is in dispute. In making this determination where a project does not readily fall within any category, the Department of Labor may consider wages being paid on analogous projects as an indication of the proper category. As stated by the Wage Appeals Board in WAB Case No. 77–23, dated December 30, 1977: "Wages, however, are only one indication. It is also necessary to look at other characteristics of the project, including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project work and other similar factors which would indicate the proper category of construction."

Building Construction

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

[1] Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project. Further, however, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work which is a part of a building project would not generally be separately classified. Where construction is "incidental" in function, 20 percent of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project.

Examples

Alterations and additions to buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices
Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses
Water and sewage treatment plants (buildings only)

Residential Construction

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

Heavy Construction

Heavy projects are those projects that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Examples

Antenna towers
Bridges (major bridges designed for commercial navigation) [2]
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Demolition (not incidental to construction)
Dikes
Docks
Drainage projects
Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units—not buildings)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc.)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Waterway construction
Water supply lines (not incidential to building)
Water and sewage treatment plants (other than buildings)
Wells

Highway Construction

Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Examples

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)
Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses; grade separation) Medians
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Runways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street Paving
Surface courses
Taxiways
Trails

In applying these guidelines contracting agencies are reminded that they have the authority only in the first instance to designate the appropriate wage schedule(s) from the *Federal Register*, and to determine the application of multiple schedules issued by the Wage and Hour Divison in project wage determinations. Any questions regarding the application of the guidelines set forth in this memorandum to a particular project or any disputes regarding the application of the wage schedules are to be referred to the Wage and Hour Division for resolution, and the instructions of the Wage and Hour Division are to be observed in all instances. Furthermore, where multiple schedules are issued by the Wage and Hour Division, they must be utilized in the contract specifications unless the agency requests and receives a change in the wage determination from the Wage and Hour Division. To ensure that appropriate schedules are issued, contracting agencies are advised to provide the Wage and Hour Division in their requests for wage determinations with a sufficiently specific description of the project to be able to determine its character.

July 14, 1978.

All Agency Memorandum No. 131.
To: All Government contracting agencies and the District of Columbia.
From: Xavier M. Vela, Administrator.
Subject: Clarification of All Agency Memorandum No. 130.

The purpose of this memorandum is to clarify Memorandum No. 130, dated March 17, 1978. Although the Wage and Hour Division has received a positive reaction from most contracting agencies who work regularly with the issues raised, some questions have arisen over specific aspects of the memorandum.

Memorandum No. 130 is intended to be a guide to categories of projects in a construction sense and is to be applied uniformly by the contracting agencies in the absence of specific direction on the wage determination or advice by the Wage and Hour Division. However, the Wage and Hour

[2] Major bridges contain elements of both heavy and highway construction. See WAB Case No. 77-2 (October 21, 1977).

Division is aware that in some circumstances the category of a project may appear to be unclear or a literal application of the guidelines may be inappropriate. For example, questions frequently arise over pumping stations, which may vary greatly in sophistication and construction techniques. Therefore, if the contracting agency has any questions regarding application of the guidelines in a specific case, or if a question is raised with the agency by interested parties, the issue of application of the wage rate schedules should be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available of area practice regarding wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's recommendation. Where the nature of the project in a construction sense is not clear, area practice regarding wages paid will be taken into consideration together with other factors such as construction techniques and classifications of workers required on the project. See WAB Case No. 77–23 (December 30, 1977).

Questions have also arisen regarding the circumstances in which multiple schedules of wage rates are issued for a project which includes construction items that in themselves would be different categories of construction. Because of the complexities in application of multiple schedules, the contracting agency should consult with the Wage and Hour Division whenever it appears that more than one schedule of rates is appropriate for a project, unless the wage decision(s) as issued indicates that multiple schedules are applicable.

Generally, multiple schedules are issued if the construction items are substantial in relation to project cost—more than approximately 20 percent. Only one schedule is issued if construction items are "incidental" in function to the over-all character of a project (*e.g.*, paving of parking lots or an access road on a building project), *and* if there is not a substantial amount of construction in the second category. Note, however, that 20 percent is a rough guide. For example, when a project is very large, items of work of a different character may be sufficiently substantial to warrant a separate schedule even though these items of work do not specifically amount to 20 percent of the total project cost.

Although the example given is that of incidental paving and utilities, the same principles are applied to other categories, such as building construction on a heavy or highway project. Thus, in a recent case, the Wage and Hour Division deleted the building schedule when it learned that a small building under a contract primarily for runway construction was approximately 4 percent of project cost. Another example of general interest is the applicability of the building schedule to a building in a rest area of a highway. In this situation, applying the principles of *MARTA*, WAB Case No. 75–5, for extensive projects, the project for comparison purposes is the rest area itself, rather than the entire highway.

These principles regarding incidental construction are not in conflict with the Wage and Hour Division's recognition in certain circumstances (WAB Case No. 77–19) of a clearly established practice of paying different wage rates on specific portions of building projects. For example, different rates may be paid for incidental paving and utilities than are paid in the construction of buildings on building projects. These projects are building projects, and the wage rates issued by the Wage and Hour Division for incidental paving and utilities reflect wages paid on such work on building projects.

Contracting agencies are reminded of their responsibility to advise contractors on the application of multiple wage schedules issued by the Wage and Hour Division or obtained by the agency from the Federal Register. If any questions arise regarding application of the schedules to the project in accordance with these guidelines, or if it appears that a wage schedule may have been issued in error, a ruling should be requested from the Wage and Hour Division. On these issues, as in all other matters in the administration of the Davis-Bacon and related acts, we will continue to work cooperatively with the contracting agencies. For convenience, Memorandum No. 130 is attached.

[FR Doc. 79–39598 Filed 12–27–79; 8:45 am]
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Friday
December 28, 1979

Federal Register

Part VIII

Department of Labor

Wage and Hour Division

Employment Standards Administration

Service Contract Act; Labor Standards for Federal Service Contracts

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Services Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend Regulations on Labor Standards for Federal Service Contracts, Part 4 issued under the Service Contract Act. Thorough substantive updating and clarification have not taken place since 1969 with respect to this regulation. Most proposed changes are made to reflect longstanding policies, rulings, and interpretations developed in the course of our experience in administering and enforcing the Act over the years. Overall, this proposed revision will codify these policies, rulings, and interpretations for the information and guidance of various interested parties, including employees and their representatives, contractors or potential contractors and their associations and Federal Procurement agencies.

DATE: Comments must be received on or before February 26, 1980.

ADDRESS: Comments should be sent to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8333.

SUPPLEMENTAL INFORMATION: It is proposed to revise, update, and clarify Regulations, 29 CFR Part 4, so that contracting agencies, contractors or potential contractors, and employees can be more fully aprised of their responsibilities and rights under the Service Contract Act and be made aware of the policies and interpretations followed by the Department of Labor in administering and enforcing the Act.

Numerous changes, clarifications, and revisions have been proposed to reflect in the regulations the policies, rulings, and interpretations developed over the years by the Department. In addition, several changes are proposed which address certain concerns expressed by contracting agencies relative to the efficient administration of the Act as it relates to the procurement process. Many editorial and clarifying changes have also been made in keeping with the Administration's objective of clear and concise regulations.

Regulations, 29 CFR Part 6 (Rules of Practice) will also be revised and a new 29 CFR Part 8, which will establish a Board of Service Contract Appeals to provide formal appellate procedures for matters arising under the Act, is also being developed. Major changes in Part 4 are summarized or highlighted below.

1. Section 4.1b(b)(2) This section now proposes that any new collective bargaining agreement entered into after the award of a negotiated procurement or execution of a contract option or an extension of a contract term will not be recognized for purpose of implementing Section 4(c) of the Act, provided that performance commences within 30 days of the award, option, or extension. This differs from the present regulations which recognizes collective bargaining agreements in negotiated procurements until 10 days prior to commencement.

2. Section 4.4(a)—This section proposes that contracting agencies file SF-98s (Notice of Intention to Make a Service Contract) not less than 90 days (rather than the current 30 days) prior to invitations for bids, requests for proposals, etc. As noted above, we will also propose a new Part 8 establishing a Board of Service Contract Appeals, which, among other things, will have the authority to review wage determinations issued under the Act. Since a wage determination is generally not renewable after award of a contract containing such a determination (or after bid opening in the case of advertised contracts, absent cancellation of bids), this additional lead time is proposed in order to provide interested parties with a meaningful opportunity to utilize the proposed appellate review procedure, if so desired, and is deemed necessary so that the Department of Labor can issue the initial and any required revised determinations in a timely manner.

This section also emphasizes the requirements that a new wage determination is required on the annual anniversary date of a multi-year contract subject to annual appropriated funds (see also § 4.145 of the Regulations) and every two years in the case of a multi-year contract not subject to annual appropriated funds (see also § 4.145(b) of the Regulations), and also that contracting agencies must submit questions as to the application of the Act to the Administrator, Wage and Hour Division, for determination.

3. Section 4.5(a)(2)—It is proposed that revisions of a wage determination received by a Federal agency after award in the case of procurements not entered into pursuant to competitive bidding procedures, shall not be effective provided that contract performance commences within 30 days after such award.

4. Section 4.5(c)(2)—This proposed revision requires contracting agencies to include contract stipulations of the Act and any applicable wage determination in a contract within 30 days of notification by the Department of Labor where it is determined by the Department that the agency made an erroneous decision that the Act did not apply.

5. Section 4.6(b)(2)—This proposed revision adds new and clarified procedures and time frames to be followed in conforming wage rates and/or fringe benefits for unlisted classes of employess to those clasifications contained in a wage determination.

6. Section 4.6(n)—This section provides a new proposed requirement that a contractor certify it is not a debarred person or firm and thus not ineligible for contract award.

7. Section 4.6(p)—This section provides clarification regarding the terms and conditions for the utilization of apprentices on contract work subject to the Act.

8. Section 4.10—This proposed revision clarifies the procedures relative to requests for "substantial variance" hearings pursuant to section 4(c) of the Act. Revised procedures, including time limitations regarding such hearings, will be provided in proposed revised Regulations, Part 6, to be issued for comment shortly.

9. Section 4.11—This section provides proposed new hearing procedures relative to questions on "arm's-length negotiations" arising under section 4(c) of the Act.

10. Section 4.12—This section provides proposed new hearing procedures relative to questions on "substantial interest" arising under section 5 of the Act.

11. Subpart B—This new proposed Subpart explains generally the Department's policies and procedures relating to the issuance and review of wage determinations. Current Subpart B, which deals with the computations of cash equivalent payments in lieu of providing fringe benefits, has been revised and placed in various subsections in new Subpart D, "Compensation Standards".

12. Section 4.101—This proposed revision clarifies the purpose and effect of the rulings and interpretations in Subpart C.

13. Section 4.117—This section (formerly § 4.122) which will discuss the application of the exemption in section

7(2) of the Act for work subject to the Walsh-Healey Public Contracts Act is temporarily reserved pending completion of an in-depth review of this question.

14. Sections 4.130–4.134—The proposed revision of these sections expands and clarifies discussion on the types of contracts subject to the Act.

15. Section 4.163—This section provides a new proposed section discussing the application of Section 4(c) of the Act.

16. Sections 4.170–4.177—The proposed revisions of these sections explain and clarify the Department's policies regarding the methods and rules for complying with the monetary wage and fringe benefits requirements of the Act.

17. Section 4.173—While no policy change has been proposed regarding the general requirements for the vesting of vacation benefits (i.e., upon individual employee anniversary date of employment), comments and suggestions are requested as to the advisability and feasibility (particularly with regard to possible problems on a changeover date) of adopting an accrual method for providing vacation benefits, similar to that used for Federal workers i.e., X hours per week, depending on length of service.

18. Section 4.187—This proposed revision sets forth the Department's position relative to the recovery of underpayments of back wages, priority of withheld funds, and liability of the "party responsible" for violations of the Act.

19. Section 4.188—This proposed revision sets forth detailed criteria regarding "unusual circumstances" and "substantial interest" under section 5 of the Act.

Regulatory Analysis: It has been determined that the proposed changes to these regulations do not warrant or require preparation of a regulatory analysis within the meeting of Executive Order No. 12044 and Department of Labor guidelines (44 FR 5570).

Accordingly, it is proposed to revise Part 4 of Title 29 as follows:

Signed at Washington, D.C. this 21st day of December 1979.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Subpart A—Service Contract Labor Standards Provisions and Procedures

Sec.

4.1 Purpose and scope.
4.1a Definitions and use of terms.
4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.
4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.
4.3 Wage determinations.
4.4 Notice of intention to make a service contract.
4.5 Contract specification of determined minimum wages and fringe benefits.
4.6 Labor standards clauses for Federal service contracts exceeding $2,500.
4.7 Labor standards clause for Federal service contracts not exceeding $2,500.
4.8 Notice of awards.
4.9 [Reserved]
4.10 Substantial variance proceedings under section 4(c) of the Act.
4.11 Arm's-length proceedings.
4.12 Substantial interest proceedings.

Subpart B—Wage Determination Procedures

4.50 Types of wage and fringe benefit determinations.
4.51 Prevailing in the locality determinations.
4.52 Collective bargaining agreement (successorship) determinations.
4.53 Locality basis of wage and fringe benefit determinations.
4.54 Issuance and revision of wage determinations.
4.55 Review and reconsideration of wage determinations.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

Introductory

4.101 Official rulings and interpretations in this subpart.
4.102 Administration of the Act.
4.103 The Act.
4.104 What the Act provides, generally.
4.105 The Act as amended.
4.106 [Reserved]

Agencies Whose Contracts May Be Covered

4.107 Federal contracts.
4.108 District of Columbia contracts.
4.109 [Reserved]

Covered Contracts Generally

4.110 What contracts are covered.
4.111 Contracts "to furnish services".
4.112 Contracts to furnish services "in the United States".
4.113 Contracts to furnish services "through the use of service employees".
4.114 Subcontracts.

Specific Exclusions

4.115 Exemptions and exceptions generally.
4.116 Contracts for construction activity.
4.117 Work subject to requirements of Walsh-Healey Act.
4.118 Contracts for carriage subject to published tariff rates.
4.119 Contracts for services of communications companies.
4.120 Contracts for public utility services.
4.121 Contracts for individual services.
4.122 Contracts for operation of postal contract stations.
4.123 Administrative limitations, variations, tolerances, and exemptions.

Particular Application of Contract Coverage Principles

4.130 Types of covered service contracts illustrated.
4.131 Furnishing services involving more than use of labor.
4.132 Services and other items to be furnished under a single contract.
4.133 Beneficiary of contract services.
4.134 Contracts outside the Act's coverage.
4.135 [Reserved]
4.136 [Reserved]
4.137 [Reserved]
4.138 [Reserved]
4.139 [Reserved]

Determining Amount of Contract

4.140 Significance of contract amount.
4.141 General criteria for measuring amount.
4.142 Contracts in an indefinite amount.

Changes in Contract Coverage

4.143 Effects of changes or extensions of contracts, generally.
4.144 Contract modifications affecting amount.
4.145 Extended term contracts.

Period of Coverage

4.146 Contract obligations after award, generally.
4.147 [Reserved]
4.148 [Reserved]
4.149 [Reserved]

Employees Covered by the Act

4.150 Employee coverage generally.
4.151 Employees covered by provisions of section 2(a).
4.152 Employees subject to prevailing compensation provisions of sections 2(a)(1) and (2) and 4(c).
4.153 Inapplicability of prevailing compensation provisions to some employees.
4.154 Employees covered by sections 2(a)(3) and (4).
4.155 Employee coverage does not depend on form of employment contract.
4.156 Employees in bona fide executive, administrative, or professional capacity.

Subpart D—Compensation Standards

4.159 General minimum wage.
4.160 Effect of section 6(e) of the Fair Labor Standards Act.
4.161 Minimum monetary wages under contracts exceeding $2,500.
4.162 Fringe benefits under contracts exceeding $2,500.
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4.164 [Reserved]

Compliance With Compensation Standards

4.165 Wage payments and fringe benefits—in general.
4.166 Wage payments—unit of payment.
4.167 Wage payments—medium of payment
4.168 Wage payments—deductions from wages paid.
4.169 Wage payments—work subject to different rates.
4.170 Furnishing fringe benefits or equivalents.

Sec.
4.171 "Bona fide" fringe benefits.
4.172 Meeting requirements in particular fringe benefits—in general.
4.173 Meeting requirements for vacation fringe benefits.
4.174 Meeting requirements for holiday fringe benefits.
4.175 Meeting requirements for health, welfare, and/or pension benefits.
4.176 Payment of fringe benefits to temporary and part-time employees.
4.177 Discharging fringe benefit obligations by equivalent means.
4.178 Computation of hours worked.
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4.180 Overtime pay—in general.
4.181 Overtime pay provisions of other Acts.
4.182 Overtime pay of service employees entitled to fringe benefits.

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4.183 Employees must be notified of compensation required.
4.184 Posting of notice.

Records

4.185 Recordkeeping requirements.
4.186 [Reserved]

Subpart E—Enforcement

4.187 Recovery of underpayments.
4.188 Ineligibility for further contracts when violations occur.
4.189 Administrative proceedings relating to enforcement of labor standards.
4.190 Contract cancellation.
4.191 Complaints and compliance assistance.

Authority: 41 U.S.C. 351, et seq., 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

Subpart A—Service Contract Labor Standards Provisions and Procedures

§ 41.1 Purpose and scope.

This part contains the Department of Labor's rules relating to the administration of the McNamara-O'Hara Service Contract Act of 1965, as amended, referred to hereinafter as the Act. Rules of practice for administrative proceedings under the Act and for the review of wage determinations are contained in Parts 6 and 8 of this chapter. See Part 1925 of this title for the safety and health standards applicable under the Service Contract Act.

§ 4.1a Definitions and use of terms.

As used in this part, unless otherwise indicated by the context—

(a) "Act," "Service Contract Act," McNamara-O'Hara Act, or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92–473, 86 Stat. 789, effective October 9, 1972, Pub. L. 93–57, 87 Stat. 140, effective July 6, 1973, and Pub. L. 94–489, 90 Stat. 2358, effective October 13, 1976 and any subsequent amendments thereto.

(b) "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(c) "Administrator" means the Administrator of the Wage and Hour Division, or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations and the enforcement of the Service Contract Act of 1965, as amended, and this part.

(d) "Office of Government Contract Wage Standards" or "OGCWS" means the organizational unit in the Wage and Hour Division, Employment Standards Administration, to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965 as amended.

(e) "Contract" includes any contract subject wholly or in part to provisions of the Service Contract Act of 1965 as amended, and any bid specification or subcontract of any tier thereunder. (See §§ 4.107–4.134.)

(f) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act. Also, the term "employer" means, and is used interchangeably with, the terms "contractor" and "subcontractor" in various sections in this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of compliance with the provisions of the Act.

(g) "Affiliate" or "affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with a contractor or subcontractor as a parent, subsidiary, or otherwise; and an officer or agent of such corporation. An affiliation is also deemed to exist where, directly or indirectly, one business concern or individual controls or has the power to control the other or where a third party controls or has the power to control both.

(h) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965.

§ 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject ot the Act and under which substantially the same services as under the predecessor contract are furnished for the same location. Section 4(c) provides that no such contractor or subcontractor shall pay any service employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such services employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart and Parts 6 and 8 of this title that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality, those wages and/or fringe benefits in such collective bargaining agreement which are found to be substantially at variance shall not apply.

If the contract has been awarded and work begun prior to a finding that the wages and fringe benefits contained in the new wage determination shall be applicable as of the date of the Administrative Law Judges' decision. (See also § 4.163(c).)

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under the predecessor contract which is consummated during the period of performance of such contract shall not be effective for purposes of the successor contract under the provisions of section 4(c) of the Act or under any

wage determination implementing such section issued pursuant to section 2(a) of the Act, if—

(1) In the case of a successor contract for which bids have been invited by formal advertising, notice of the terms of such new or changed collective bargaining agreement is received by the contracting agency less than 10 days before the date set for opening of bids, provided that the contracting agency finds that there is not reasonable time still available to notify bidders; or

(2) Notice of the terms of a new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term, provided performance of such contract commences within 30 days after such award or renewal option or extension. If performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c); and

(3) The limitations in paragraph (b) (1) or (2) of this section shall apply only if the contracting officer has given both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of any estimated procurement date, such as issue of bid solicitation, bid opening, date of award, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980).

§ 4.3 Wage determinations.

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid specifications subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator. Wage determinations shall be issued as soon as administratively feasible for all contracts subject to section 2(a) of the Act, and will be issued for all contracts entered into under which more than 5 service employees are to be employed.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisons for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees or from pertinent collective bargaining agreements with respect to the implementation of section 4(c), with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332. The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or supersedure.

(c) Wage determinations will be available for public inspection during business hours at the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and copies will be made available on request at Regional Offices of the Wage and Hour Division.

§ 4.4 Notice of intention to make a service contract.

(a) For any contract exceeding $2,500 which may be subject to the Act, the contracting agency shall file with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. Such notices shall be filed not less than 90 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (5) on each bi-annual anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. (See § 4.4(d).) If there exists any question or doubt as to the possible application of the Act to a particular procurement, the contracting agency shall submit such question in a timely manner to the Administrator for determination. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, and Standard Form 98–A or a statement containing the information in paragraph (b) of this section and shall be completed in accordance with the instruction provided and shall be supplemented by the information required under paragraphs (c) and (d) of this section. Supplies of Standard Forms 98 and 98–A are available in all GSA supply depots under stock numbers 7540–926–8972 and 7540–118–1008, respectively.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF–98) either a Standard Form 98–A or a statement in writing, containing the following information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed 5, the number for which the inclusion of a wage determination in the contract is mandatory under the provisions of section 10 of the Act as set forth in § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332, together with a specification of the rates of wages and fringe benefits that would be paid by the Government

to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF–98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and frings benefits currently or prospectively payable under such agreement. If such services are being furnished for more than one location and the collectively bargained wage rates and fringe benefits are different for different locations or do not apply for one or more locations, the agency shall identify the locations to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event that the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arms-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Office of Government Contract Wage Standards and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the Notice of Intention to Make a Service Contract (Form SF–98).

(d) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall file with its Standard Form 98 a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a Standard Form 98 must be filed on the annual anniversary date, a new Standard Form 98 shall be submitted on each bi-annual and anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(e) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b), (c), or (d) of this section will be returned to the agency for further action.

(f) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 90 days prior to any invitation for bids, request for proposals, or commencement of negotiations for a proposed contract subject to section 2(a) of the Act, the notice shall be submitted to the Office of Government Contract Wage Standards as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission. In the event the proposed contract involves performance by more than 5 service employees and an emergency situation requires an immediate award, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, by telephone for guidance prior to any such award. In no event may a contract on which more than 5 service employees are contemplated to be employed be awarded without an appropriate wage determination. (section 10 of the Act.)

(g) If any invitation for bids, request for proposals, or commencement of negotiations for a proposed contact for which a wage determination was provided in response to a Standard Form 98 has been delayed, for whatever reason, more than 30 days from the date of such procurement activity as indicated on the submitted Standard Form 98, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement.

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract agreed upon in excess of $2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in any applicable currently effective wage determination, including any expressed in any document referred to in paragraphs (a)(1) or (2) of this section:

(1) Any communication from the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term) revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective *provided* performance of such contract commences within 30 days after such award (or execution of an option or extension of term). If performance of such procurement does not commence within this 30-day period, any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(b)(1) The following exemptions from the compensation requirements of section 2(a) of the Act apply, subject to the limitations set forth in paragraphs (b) (2), (3), and (4) of this section: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption (i) from the determined wage and fringe benefits section of the Act (section 2(a) (1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of contracts under which five or less service employees are to be employed, and for which no such wage

or fringe benefit determination has been issued;

(2) The exemptions provided in paragraph (b)(1) of this section, which were adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92–473, do not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in the applicable wage determination is set forth in § 4.6(b).

(3) The exemptions provided in paragraph (b)(1) of this section do not apply to any contract for which section 10 of the Act as amended and § 4.3 of this part require an applicable wage determination.

(4) The exemptions provided in paragraph (b)(1) of this section do not exempt any contract from the application of the provisions of section 4(c) of the Act as amended.

(c)(1) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall, within 30 days of receipt of a wage determination through the exercise of any and all of its power and authority that may be needed (including, where necessary, its authority to negotiate, its authority to pay any necessary additional costs, and its authority under any provision of the contract authorizing changes) to include in the contract any wage determinations communicated to it by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

(2) Where the Department of Labor discovers and determines, whether before or subsequent to contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement, the contracting agency, within 30 days of notification by the Department of Labor, shall include in the contract the stipulations contained in § 4.6 and any applicable wage determination issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). *(G. L. Christian & Associates v. U.S.*, 312 F. 2d 418 (Ct. Cl. 1963), rearg. denied 320 F. 2d 345, cert. denied 375 U.S. 954, reh. denied 376 U.S. 929, reh. denied 377 U.S. 1010 (53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp. v. McLucas*, 381 F. Supp. 657 (D N) 1974); *Marine Engineers Beneficial Assn., District 2 v. Military Sealift Command*, 86 CCH Labor Cases ¶33,782 (D DC 1979); *Brinks, Inc. v. Board of Governors of the Federal Reserve System*, 86 CCH Labor Cases ¶33,792 (D DC 1979). (See also 32 CFR 1–403.)

(d) In cases where the contracting agency has filed its SF–98 within the time limits discussed in § 4.4(a) and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 of the Act and § 4.3 of this Part mandate an applicable wage determination, contact the Office of Government Contract Wage Standards, Wage and Hour Division by telephone for guidance.

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract (and any bid specification therefor) entered into by the United States or the District of Columbia, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965, as amended: This contract, is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (this Part 4):

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract. Unless specified otherwise in the wage determination, the contractor must consider an employee's length of service with the predecessor contractor(s), if any, in determining the employee's wage and fringe benefit entitlements.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract, be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined by bona fide agreement of the interested parties, who shall be deemed to be the contracting officer, the contractor, and the unlisted class of employees who will perform on the contract or their authorized representatives.

(ii) Such conforming procedure shall be initiated by the contractor at the time of the contract commencement date, or prior to the performance of contract work by such unlisted class of employee if a need for an additional class(es) arises, and shall be concluded no later than 30 days after such unlisted class of employees performs any contract work. A report of the proposed conforming action shall be promptly submitted in writing by the contractor, including evidence in writing of agreement by the employees involved, to the contracting officer who shall review this action, and if he or she agrees, shall promptly submit a report of the action to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review and approval or disapproval. If the conforming procedure cannot be concluded within the 30-day time period, the contracting officer shall submit an explanation of the special circumstances which prevent a timely agreement to the Office of Government Contract Wage Standards together with a request for additional time for resolution of the matter.

(iii) If the parties do not reach an agreement or acknowledgement disagreement within this 30-day period on a proper classification which is, in fact, conformable, the contracting officer shall promptly submit the question, together with his or her recommendations and all pertinent information, including the positions of employees if in disagreement, to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, of the Department of Labor for final determination.

(iv) The process of establishing wage rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances.

Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s), is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(v) Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Office of Government Contract Wage Standards retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(vii) Failure by the contractor to comply with its responsbilities in sections (b)(2) (i) through (vi) of this section shall also be a violation of the Act and this contract. Upon discovery of such violation, the Office of Government Contract Wage Standards shall then make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(viii) Any agreement reached by the interested parties will not be considered a bona fide agreement unless the affected employees in the unlisted classification(s) have been provided with a full explanation of the conformance procedures, and the basis for arriving at the proposed conformed classification (and wage rate and/or fringe benefits). The affected employees shall be afforded an opportunity to agree or disagree without threat of job reprisal. Upon final determination of this action by the Office of Government Contract Wage Standards, each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of Regulations, Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person perfoming work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work, (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregong obligation unless the limitations of § 4.1b(b) apply or unless the Secretary of Labor or his authorized representative deterimines that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arms-length negotiations, or finds, after a hearing as provided in § 4.10 of this part that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similiar in the locality. Where the Department finds after a hearing in accordance with the review procedures provided in 29 CFR 4.10 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrative Law Judge, or Board of Service Contract Appeals, as the case may be irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973).

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under Part 1925 of this title.

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) through (5) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour

Division, Employment Standards Administration of the U.S. Department of Labor.

(1) Name and address and social security number of each employee.

(2) The correct work classification of classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(3) The number of daily and weekly hours so worked by each employee.

(4) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(6) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(7) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite.

Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract; and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act, all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for *information purposes only:*

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates, of wages and fringe benefits:

Employee class	Monetary wage—fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a notarized list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) All rulings and interpretations of the Service Contract Act of 1965, as amended, expressed in Regulations, 29 CFR Part 4 are hereby incorporated by reference in this contract.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92–473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the empolyment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (Parts 520, 521, 524, and 525 of this title).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropirate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (Parts 520, 521, 524, and 525 of this title).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermied rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the 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, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determiniation. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. It should be noted, however, that the employment of trainees at less than the prescribed rate for the work performed, unless a trainee classification is listed in an applicable wage determination, is not permitted under the Service Contract Act.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3 (m) of the Fair Labor Standards Act and Regulations, Part 531 of this Title: Provided, however, That the amount of such credit may not exceed $1.32 per hour beginning Januray 1, 1978, $1.30 per hour beginning January 1, 1979, $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. to utilize this proviso:

(1) the employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) the employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) the employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) the use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

§ 4.7 Labor standards clause for Federal service contracts not exceeding $2,500.

Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

Service Contract Act. Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia awards a contract which may be in excess of $2,500 subject to the Act, it shall furnish the Office of Government Contract Wage Standards, Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed $——." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540–634–4049.

§ 4.9 [Reserved]

§ 4.10 Substantial variance proceedings under section 4(c) of the Act.

(a) *Statutory provision.* Under section 4(c) of the Act, and under wage determinations made as provided in section 2(a)(1) and (2) of the Act, contractors and subcontractors performing contracts subject to the Act generally are obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would have

been entitled under a collective bargaining agreement if they were employed on like work under a predecessor contract. (see §§ 4.1b, 4.3, 4.6(d)(2).) Section 4(c) of the Act provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality".

(b) *Prerequisites for hearing.* (1)(i) A request for a hearing under this section may be made by the contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards, and shall include the following:

(A) The number of any wage determination at issue, the name of the contracting agency whose contract is involved, and a brief description of the services to be performed under the contract;

(B) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contact award, commencement date of the contract or its follow-up option period;

(C) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality;

(D) Names and addresses (to the extent known) of interested parties.

(ii) If the information in paragraph (b)(1)(i) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, in his/her discretion. No particular form is prescribed for submission of a request under this section.

(2) No hearing will be provided pursuant to this section and section 4(c) of the Act unless the Administrator determines from information available or submitted with a request for such a hearing that there may be a substantial variance between some or all of the wage rates and/or fringe benefits provided for in a collective bargaining agreement to which the service employees would otherwise be entitled by virtue of the provisions of section 4(c) of the Act, and those which prevail for services of a character similar in the locality.

(3) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below, except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c) Referral to the Chief Administrative Law Judge. When the Administrator determines from the information available or submitted with a request for a hearing that there may be a substantial variance, the Administrator on his own motion or on application of any interested person may by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such a fact finding hearing as may be necessary to render a decision solely on the issue of whether the wages and fringe benefits contained in the collective bargaining agreement which was the basis for the wage determination at issue are substantially at variance with those which prevail for services of a character similar in the locality. No authority is delegated under this section to hear and/or decide any other issues pertaining to the Service Contract Act. As provided in section 4(a) of the Act, the provisions of §§ 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6, Subpart B and Part 8.

(d) The Administrator shall be an interested party and shall have the opportunity to participate in the proceeding to the degree he/she considers appropriate.

§ 4.11 Arm's length proceedings.

(a) Statutory provision. Under Section 4(c) of the Act, the wages and fringe benefits provided in the predecessor contractor's collective bargaining agreement must be reached "as a result of arm's-length negotiations." This provision precludes arrangements by parties to a collective bargaining agreement who, either separately or together, acted with an intent to manipulate, exploit or otherwise take advantage of the wage determination scheme provided for in Sections 2(a) and 4(c) of the Act. A finding as to whether a collective bargaining agreement or particular wages and fringe benefits therein are reached as a result of arm's-length negotiations may be made through investigation, hearing or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.

(b)(1) A request for a determination under this section may be made by a contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards. Although no particular form is prescribed for submission of a request under this section, such request shall include the following information:

(i) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's-length negotiations;

(ii) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(iii) Names and addresses (to the extent known) of interested parties.

(2) Pursuant to Section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of arm's-length negotiations.

(2) If the Administrator determines that there may not have been arm's-length negotiations, but finds that there is insufficient evidence to render a final

decision thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (d).

(3)(i) If the Administrator finds that the collective bargaining agreement or wages and fringe benefits at issue were reached as a result of arm's-length negotiations or that arm's-length negotiations did not take place, the interested parties, including the parties to the collective bargaining agreement, will be notified of the Administrator's findings, which shall include the reasons therefor, and such parties shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of arm's-length negotiations.

(ii) Such parties shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the administrator's ruling is in error, including facts alleged to be in dispute, if any shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (c)(3)(ii) of this section above, the Administrator's ruling shall be final, and a new wage determination will be issued for the contract.

(d) Referral to the Chief Administrative Law Judge. The Administrator on his/her own motion, under paragraph (c)(2) or upon a request for a hearing under paragraph (c)(4)(ii) where the Administrator determines that relevant facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge for designation of an Administrative Law Judge, who shall conduct such hearings as may be necessary to render a decision solely on the issue of arm's-length negotiations. However, in situations where there is also a question as to whether some or all of the collectively bargained wage rates and/or fringe benefits are substantially at variance (see § 4.10), the referral shall include both issues for resolution in one proceeding. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(e) Referral to the Board of Service Contract Appeals. When a party requests a hearing under paragraph (c)(4)(ii) and the Administrator determines that no material facts are in dispute, the Administrator shall refer the issue and the record compiled thereon to the Board of Service Contract Appeals to render a decision solely on the issue of arm's-length negotiations. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 8.

§ 4.12 Substantial interest proceedings

(a) *Statutory provision.* Under Section 5(a) of the Act, no contract of the United States (or the District of Columbia) shall be awarded to the persons or firms appearing on the list distributed by the Comptroller General giving the names of persons or firms who have been found to have violated the Act until 3 years have elapsed from the date of publication of the list. Section 5(a) further states that "no contract of the United States shall be awarded * * * to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest * * *." A finding as to whether persons or firms whose names appear on the debarred bidders list have a substantial interest in any other firm, corporation, partnership, or association may be made through investigation, hearing, or otherwise pursuant to the Secretary's authority under Section 4 (a) of the Act.

(b) *Ineligibility.* See § 4.188 of this part for the Secretary's rulings and interpretations with respect to substantial interest.

(c)(1) A request for a determination under this section may be made by any interested party, including contractors or prospective contractors, and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(2) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has a substantial interest in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia. No particular form is prescribed for the submission of a request under this section.

(d)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of substantial interest.

(2) If the Administrator determines that there may be a substantial interest, but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (e).

(3) If the Administrator finds that no substantial interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(4)(i) If the Administrator finds that a substantial interest exists, the person or firm affected will be notified of the Administrator's finding, which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of substantial interest.

(ii) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in subparagraph (ii) above, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General.

(e) *Referral to the Chief Administrator Law Judge.* The Administrator on his/her own motion, or upon a request for a hearing where the Administrator determines that material facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of substantial interest. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceedings, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(f) Referral to the Board of Service Contract Appeals. When the person or firm requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Board of Service Contracts Appeals to render a decision solely on the issue of substantial interest. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 8.

Subpart B—Wage Determination Procedures

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the Locality.* Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act); and

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees under the predecessor contract.

§ 4.51 Prevailing in the locality determinations.

(a) *Information considered.* The minimum monetary wages and fringe benefits set forth in determinations of the Secretary are based on all available pertinent information as to wage rates and fringe benefits being paid at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics, U.S. Department of Labor, or other Labor Department personnel. Information may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in collective bargaining agreements where they have been determined to prevail in a locality for specified occupational class(es) of employees.

(b) *Determination of Prevailing Rates.* Where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail. The wage rates and fringe benefits in a collective bargaining agreement covering 2,001 janitors in a locality, for example, prevail if it is determined that no more than 4,000 workers are engaged in such janitorial work in that locality. In the case of information developed from surveys, statistical measurements of central tendency such as a median (a point in a distribution of wage rates where 50 percent of the surveyed workers receive that or a higher rate and an equal number receive a lesser rate) or the mean (average) are considered reliable indicators of the prevailing rate. Which of these statistical measurements will be applied in a given case will be determined after a careful analysis of the overall survey, separate classification data, patterns existing between survey periods, and the way the separate classification data interrelate. Use of the median is the general rule. However, the mean (average) rate may be used in situations where, after analysis, it is determined that the median is not a reliable indicator. Examples where the mean may be used include situations where:

(1) The number of workers studied for the job classification constitutes a relatively small sample and the computed median results in an actual rate that is paid to few of the studies workers in the class;

(2) Statistical deviation such as a skewed (bimodal or multimodal) frequency distribution biases the median rate due to large concentrations of workers toward either end of the distribution curve and the computed median results in an actual rate that is paid to few of the studies workers in the class; or

(3) The computed median rate distorts historic wage relationships between job levels within a classification family, (i.e., Electronic Technician Classes A, B, and C levels within the Electronic technician classification family), between classifications of different skill levels (i.e., a maintenance electrician as compared with a maintenance carpenter), or, for example, yields a wage movement inconsistent with the pattern shown by the survey overall or with related and/or similarly skilled job classifications.

(c) *Due consideration.* In making wage and fringe benefit determinations, section 2(a)(5) of the Act requires that due consideration be given to the rates that would be paid by the Federal agency to the various classes of service employees if § 5341 or § 5332 of Title 5, United States Code, were applicable to them. Section 4341 refers to the Wage Board or Coordinated Federal Wage System for "blue collar" workers and § 5332 refers to the General Schedule pay system for "white collar" workers. The term "due consideration" implies the exercise of discretion on the basis of the facts and circumstances surrounding each determination, recognizing the legislative objective of narrowing the gap between the wage rates and fringe benefits prevailing for service employees and those established for Federal employees. Each wage determination is based on a survey or other information on the wage rates and fringe benefits being paid in a particular locality and also takes into account those wage rates and fringe benefits which would be paid under Federal pay systems.

§ 4.52 Collective bargaining agreement (successorship) determinations.

Determinations based on the collective bargaining agreement of a predecessor contractor set forth by job classification each provision relating to wages (such as the established straight time hourly or salary rate, cost-of-living allowance, and any shift, hazardous, and other similar pay differentials) and to fringe benefits (such as holiday pay, vacation pay, sick leave pay, life, accidental death, disability, medical, and dental insurance plans, retirement or pension plans, severance pay, supplemental unemployment benefits, saving and thrift plans, stock-option plans, funeral leave, jury/witness leave, or military leave) contained in the predecessor's collective bargaining agreement, as well as conditions governing the payment of such wages and fringe benefits. Accrued wages and fringe benefits and prospective increases therein are also included. Each wage determination is limited in application to a specific contract succeeding a contract which had been performed by a contractor with a collective bargaining agreement, and contains a notice to prospective bidders regarding their obligations under section 4(c) of the Act.

§ 4.53 Locality basis of wage and fringe benefit determinations.

(a) Under section 2(a) of the Act, the Secretary or his authorized representative is given the authority to determine the minimum monetary wages and fringe benefits prevailing for various classes of service employees "in the locality". Although the term "locality" has reference to geographic area, it has an elastic and variable meaning and contemplates consideration of the existing wage structures which are pertinent to the employment of particular classes of service employees on the varied kinds of service contracts in defining the limits of that area. Because wage structures are extremely varied, there can be no precise single formula which would define the geographic limits of a "locality" that would be relevant or appropriate for the determination of prevailing wage rates and prevailing fringe benefits in all

situations under the Act. The locality within which a wage or fringe benefit determination is applicable is, therefore, defined in each such determination upon the basis of all the facts and circumstances pertaining to that determination. Locality is ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area, but may be defined as for example, a city, a State, a region, or the entire country, depending on the geographical scope of the data on which the determination was based, the nature of the services being contracted for, and the procurement method used. For example, a survey by the Bureau of Labor Statistics of the Baltimore, Maryland Standard Metropolitan Statistical Area includes the counties of Baltimore, Harford, Howard, Anne Arundel, and the City of Baltimore. A wage determination based on such information would define locality as the same geographic area included within the scope of the survey.

(b) *Locality when the place of performance is not known at the time of bid advertising.* Where the services in a particular bid advertisement are to be performed for a Federal agency at the site of the successful bidder, in contrast to services to be performed at a sepcific Federal facility or installation, the location where the work will be performed often cannot be ascertained at the time of bid advertisement. In these circumstances, the appropriate locality may be a composite are consisting of all the places in which the sevices sought by the Government could be performed by interested bidders. The composite area is established in advance of bid advertising from the Federal agency's list of interested bidders or other sources such as bid abstracts from prior solicitations for similar services. The wage determination, which applies to all prospective bidders, is based on the wage and fringe benefit information available in all of the various places at which the contract work may be performed within the composite locality, which may be defined, depending on the circumstances, as a State, a group of States, or the entire country.

(c) Where the wage rates and fringe benefits contained in a collective bargaining agreement applicable to the predecessor contract are set forth in a determination, locality in such a determination is typically described as the geographic area in which the Federal facility is situated. The determination applies to any sucessor contractor, regardless of place of performance and whether the place of performance is known at the time of bid advertising.

§ 4.54 Issuance and revision of wage determinations.

(a) Section 4.4 of Subpart A requires that the awarding agency file a notice of intention to make a service contract which is subject to the Act with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, prior to any invitation for bids or the commencement of negotiations for any contract exceeding $2,500. Upon receipt of the notice, the Office of Government Contract Wage Standards may issue a new determination of minimum monetary wages and fringe benefits for the classes of service employees who will perform work on the contract or may revise a determination which is currently in effect.

(b) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a)(2) of Subpart A.

(c) Determinations issued by the Office of Government Contract Wage Standards with respect to particular contracts are required to be incorporated in the invitations for bids or negotiation documents issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are, of course, the same for all bidders so none will be placed at a competitive disadvantage.

§ 4.55 Review and reconsideration of wage determinations.

(a) *Review by the Administrator.* (1) Any interested person affected by a wage determination issued under section 2(a) of the Act may request review and reconsideration by the Administrator. A request for review and reconsideration may be made by the contracting agency or other interested person, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. In no event shall a request for review of any aspect of a wage determination, including its accuracy or its applicability, be considered after the opening of bids in the case of a competitively advertised procurement, or after the commencement of a contract in the case of a negotiated procurement. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, any evidence furnished by the person requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued. The person requesting review and reconsideration shall be advised in writing of any changes in the wage determination or of the basis for a decision reaffirming the wage determination issued.

(b) Review by the Board of Service Contract Appeals. Any decision of the Administrator under paragraph (a) of this section may be appealed to the Board of Service Contract Appeals within 10 days of issuance of the Administrator's decision. Any such appeal shall be in accordance with the provisions of Part 8 of this title.

Subpart C—Application of the McNamara-O'Hara Service Contract Act

§ 4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in § 4.102, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors,

subcontractors, and employees who perform work under such contracts.

(b) these rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See for example, *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944); *Roland Co.* v. *Walling*, 326 U.S. 657 (1946): *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507–509 (1943); *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 128 (1940); *United States* v. *Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Nello L. Teer Co.* v. *United States*, 348 F.2d 533, 539–540 (Ct. Cl. 1965), cert. denied, 383 U.S. 934 (Davis-Bacon Act); *North Georgia Building & Construction Trades Council* v. *U.S. Department of Transportation*, 399 F. Supp. 58, 63 (N.D. Ga. 19075) (Davis-Bacon Act); *Zachry Co.* v. *United States*, 344 F.2d 352 (Ct. Cl. 1965) (Davis-Bacon Act); *Curtiss-Wright Corp.* v. *McLucas*, 364 F. Supp. 750, 769–72 (D.N.J. 1973); and 43 Atty. Gen. Ops. —— (March 9, 1979); 53 Comp. Gen. 647, 649–51 (1974); 57 Comp. Gen. 501, 506 (1978).

(c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support policies and interpretations contained in this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary's Order No. 16–75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2–76, Feb. 23, 1976, 41 FR 9016). These interpretations are a proper exercise of the Secretary's authority. *Idaho Sheet Metal Works* v. *Wirtz* 383 U.S. 190, 208 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judge's decisions are also made in this part where it appears they they will contribute to a better understanding of the stated interpretations and policies.

(d) the interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" (*Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433–34 (1971); *Udall* v. *Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States* v. *Davison Fuel & Dock Co.*, 371 F.2d 705, 711–12 (C.A. 4, 1967).)

(e) On and after final publication of this part in the Federal Register, the interpretations containedherein shall be ineffect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces certain interpretations previously published in the Federal Register and Code of Federal Regulations as Part 4 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part, to the extent they are inconsistent with the rules herein stated, are superseded, rescinded, and withdrawn.

(f) Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and health, U.S. Department of Labor, Washington, D.C. 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

§ Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39) which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. *Curtiss Wright Corp.* v. *McLucas* 364 F. Supp. 750, 769 (D NJ 1973).

§ 4.103 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89–286, 79

Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after January 20, 1966. It has been amended by Pub. L. 92–473, 86 Stat 798; by Pub. L. 93–57, 87 Stat. 140; and by Pub. L. 94–489, 90 Stat. 2358.

§ 4.104 What the Act provides, generally.

(a) The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500 must contain stipulations as set forth in § 4.6 of this Part requiring (a) that specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet safety and health standards; and (c) that notice be given to such employees of the compensation due them under the minimum wage and fringe benefits provisions of the contract. Contractors performing work subject to the Act thus enter into competition to obtain Government business on terms of which they are fairly forewarned by inclusion in the contract. (*Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 507 (1943).) The Act's purpose is to impose obligations upon those favored with Government business by precluding the use of the purchasing power of the Federal Government in the unfair depression of wages and standards of employment. (See H.R. Rep. No. 948, 89th Cong., 1st Sess. 2–3 (1965); S. Rep. No. 798, 89th Cong., 1st Sess. 3–4 (1965).) The Act does not permit the monetary wage rates specified in such a contract to be less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1)). In addition, it is a violation of the Act for any contractor or subcontractor under a Federal contract subject to the Act, regardless of the amount of the contract, to pay any of his employees engaged in performing work on the contract less than such Fair Labor Standards Act minimum wage. Contracts of $2,500 or less are not, however, required to contain the stipulations described above. These provisions of the Service Contract Act are implemented by the regulations contained in this Part 4 and are discussed in more detail in subsequent sections of subparts C, D, and E.

§ 4.105 The Act as amended.

(a) The provisions of the Act (see §§ 4.102–4.103) were amended, effective October 9, 1972, by Public Law 92–473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159–4.179) were revised to impose on successor contractors certain requirements (see § 4.1b) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services for the same location in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length). The Secretary of Labor is to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining minimum monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure extension of coverage by wage determinations of the Secretary to substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see (§ 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) The provisions of the Act were amended by Pub. L. 93–57, 87 Stat. 140, effective July 6, 1973, to extend the Act's coverage to Canton Island.

(c) The provisions of the Act were amended by Pub. L. 94–489, 90 Stat. 2358, approved October 13, 1976, to extend the Act's coverage to white collar workers. Accordingly, the minimum wage protection of the Act now extends to all workers, both blue collar and white collar, other than persons employed in a bona fide executive, administrative, or professional capacity as those terms are used in the Fair Labor Standards Act and in Part 541 of Title 29, Pub. L. 94–489 accomplished this change by adding to Section 2(a)(5) of the Act a reference to 5 U.S.C. 5332, which deals with white collar workers, and by amending the definition of service contract employee in Section 8(b) of the Act.

(d) Included in this Part 4 and in Part 6 of this subtitle are provisions to give effect to the amendments mentioned in this section.

§ 4.106 [Reserved]

Agencies Whose Contracts May Be Covered

§ 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) "entered into by the United States" and section 2(b) applies to contracts entered into "with the Federal Government." Within the meaning of these provisions, contracts entered into by the United States and contracts with

the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, such as the Postal Service, and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, or of other Federal agencies, such as Federal Reserve Banks, are included among those subject to the general coverage of the Act. (*Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 86 CCH Labor Cases ¶ 33,792 (D.D.C. 1979), 43 Atty. Gen. Ops. ——— (September 26, 1978).) Contracts with the Federal Government and contracts entered into "by the United States" within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services desired by the Government, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the contract as one entered into by the United States. Such contracts may be entered into by the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor with the Government under the terms of a contract having a principal purpose other than the furnishing of services through the use of service employees (as, for example, a contract in which the prime contractor has the responsibility for all work to be done in connection with the operation and management of a Federal plant, installation, facility, or program, along with the legal authority to act as agency for and on behalf of the Government and to obligate Government funds in the procurement of all services and supplies necessary to carry out the entire program of operation). The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act. However, service contracts entered into by Federal contractors or State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the contractor or public body which have been received from the Federal Government as payment for contract work or as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act. Similarly, contracts let under the Medicaid program which are financed by Federally-assisted grants to the States, and contracts which provide for insurance benefits to a third party, as under the Medicare program, are not subject to the Act.

§ 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of $2,500 which are "entered into by the * * * District of Columbia." The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into by the District of Columbia within the meaning of this provision. Such contracts are also considered contracts "entered into with the Federal Government" within the meaning of section 2(b) of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes. District Government contracts have been made subject to the same labor standards provisions as contracts of other agencies and instrumentalities of the United States.

§ 4.109 [Reserved]

Covered Contracts Generally

§ 4.110 What contracts are covered.

(a) The Act covers service contracts of the Federal agencies described in §§ 4.107–4.108. Except as otherwise specifically provided (see §§ 4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers. Contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act; however, "subcontracts" awarded under "prime contracts" between the Small Business Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of $2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

(b) "Contract" as including "any bid specification". The Act, by its express terms, applies to "every contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services in the United States through the use of service employees". Thus, as noted in subsequent sections discussing the application of the Act to particular contracts, the Act's provisions may be applicable to separate specifications for services in a contract but not to other contract specifications such as construction or supply specifications. Accordingly, except where otherwise noted, the term "contract" as used in this part shall be deemed to include any contract subject wholly or in part to the provisions of the Act. (See § 4.1a(d).)

§ 4.111 Contracts "to furnish services."

(a) *"Principal purpose" as criterion.* Under its terms, the Act applies to a "contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * *." The principal purpose criterion applies only in determining whether a contract or bid specification is for services. Covered contracts need not be performed "principally in the United States" or "principally through the use of service employees." (See §§ 4.112 and 4.113.) If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract or bid specification for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§ 4.130 et seq., no hard and fast rule can be laid down as to the precise meaning of the term "principal purpose". This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in § 4.131.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of "service employee" the Act does not define, or limit, the types of "services" which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see § 4.113). Examples of some such contracts are set forth in §§ 4.130 et seq. In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for "services" those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for "services" as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428).

§ 4.112 Contracts to furnish services "in the United States."

(a) The Act covers contract services furnished "in the United States". The geographical area included in the "United States" is defined in section 8(d) as "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Islands, Eniwetok Atoll, Kwajalein Atoll, Johnston Island and Canton Island." The definition expressly excludes any other territory under the jurisdiction of the United States (e.g. the Canal Zone) and any United States base or possession within a foreign country. Services to be performed on a vessel operating exclusively in international waters outside the geographic areas named in section 8(d) would not be services furnished "in the United States" within the meaning of the Act.

(b) A service contract to be performed in its entirety outside the geographic limits of the United States as thus defined is not covered and is not subject to the labor standards of the Act. However, if a service contract is to be performed in part within and in part without these geographic limits, the stipulations required by § 4.6 or § 4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract, and the labor standards must be observed with respect to that part of the contract services that is performed within these geographic limits. In such a case, the requirements of the Act and of the contract clauses will not be applicable to the services furnished outside the United States.

§ 4.113 Contracts to furnish services "through the use of service employees".

(a) *Use of "service employees" in a contract performance.* (1) As indicated in § 4.110, the Act covers service contracts in which "service employees" will be used in performing the services which it is the purpose of the contract to procure. A service contract otherwise subject to the Act ordinarily will meet this condition if any of the services which it is the principal purpose of the contract to obtain will be furnished through the use of any service employee or employees. Even where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor, the contract cannot be considered outside the reach of the Act unless it is known in advance that the contractor or any subcontractor will in no event use any service employee during the term of the contract in furnishing the services called for. If the contracting officer knows when advertising for bids or concluding negotiations that no such employee will be used by the contractor in any event in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by § 4.6 or § 4.7 may be omitted. However, in all other cases such clauses must be included in the contract documents, for application in the event service employees are used in furnishing the services. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also, where the services the Government wants under the contract are principally of a type that will require the use of any service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of

professional personnel to whom the Act does not apply.

(2) The coverage of the Act does not extend, however, to contracts which have as their principal purpose the procurement of a type of service in the furnishing of which no service employees will be used. A contract for medical services by professional medical personnel is an example of such a contract. So are other contracts under which the desired services called for by the Government are to be performed exclusively or nearly so by bona fide executive, administrative, or professional personnel as defined in Part 541 of this title (see paragraph (b) of this section). Also, any contract for professional services which is performed essentially by professional employees, with the use of service employees bring only a minor factor in the performance of the contract is not covered by the Act. While the incidental employment of service employees will not render a contract for professional services subject to the Act, a contract which may involve the use of service employees to a significant or substantial extent would be covered even though there is some use of professional employees in performance of the contract.

Under these principles, many contracts for research and development, statistical surveys, engineering research and designing, computer services, etc., would generally be subject to the Act because the contracts may involve the use of a significant number of service employees. Laboratory technicians, interviewers, draftsmen, computer operators, and data entry personnel are a few examples of the classes of service employees that may be employed on such contracts. While the work of such service employees may be performed under the supervision and direction of professional personnel and the final analysis and reporting may be performed by professionals, nevertheless, the work performed by the service employees is a significant and important part of the overall contract requirements.

(b) *"Service employees" defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of "service employee" in section 8(b) of the Act is controlling. It provides:

> The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title and as discussed further in § 4.156. Some of the specific types of service employees who may be employed on service contracts are noted in other sections which discuss the application of the Act to employees.

§ 4.114 Subcontracts.

(a) *"Contractor" as including "subcontractor."* Except where otherwise noted or where the term "Government prime contractor" as used in this Part 4 shall be deemed to include a subcontractor. The term "contractor" as used in the contract clauses required by Subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor. (See § 4.1a(e).)

(b) *Liability of Prime Contractor.* When a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severably liable with any subcontractor for any acts, omissions, or underpayments on the part of a subcontractor which would constitute a violation of the prime contract. The prime contractor is required to include the prescribed contract clauses (§§ 4.6–4.7) and applicable wage determination in all subcontracts and the appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of failure to comply with any of the Act's requirements.

Specific Exclusions

§ 4.115 Exemptions and exceptions generally.

(a) The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of which is to furnish services through the use of service employees.

(b) In addition, as noted in § 4.102, provision is made in section 4 of the Act for administrative action by the Secretary of Labor providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act in accordance with standards set forth in the section. These provisions of the Act apply as explained in the following discussion. The limitations stated in this subpart in defining the scope of the statutory exemptions are reasonable limitations that were found necessary and proper in the public interest in accordance with the provisions of section (4)b of the Act.

(c) The statutory exemptions in section 7 of the Act are as follows:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healy Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, (now the U.S. Postal Service) the principal purpose of which is the operation of postal contract stations.

§ 4.116 Contracts for construction activity.

(a) *General scope of exemption.* The Act, in paragraph (1) of section 7, exempts from its provisions "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." This language corresponds to the language used in the Davis-Bacon Act to describe its coverage (40 U.S.C. 270a). The legislative history of the McNamara-O'Hara Service Contract Act indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the McNamara-

O'Hara Act those contracts (and any bid specification therefor) to which the Davis-Bacon Act is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work. (See H. Rept. 798, pp. 2, 5, and H. Rept. 948, pp. 1, 5, also Hearing, Special Subcommittee on Labor, House Committee on Education and Labor, p. 9 (89th Cong., 1st sess.).) The intent of section 7(1) is simply to exclude from the provisions of the Act those construction contracts which involve the employment of persons whose wage rates and fringe benefits are determinable under the Davis-Bacon Act.

(b) *Contracts not within exemption.* (1) Section 7(1) does not exempt contracts which, for purposes of the Davis-Bacon Act, are not considered to be of the character described by the corresponding language in that Act, and to which the provisions of the Davis-Bacon Act are therefore not applied. Such contracts are accordingly subject to the McNamara-O'Hara Act where their principal purpose is to furnish services in the United States through the use of service employees. For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act may be considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract will be subject to the Act in accordance with its general coverage provisions. It should be noted that the fact a contract may be labeled as one for the sale and removal of property, such as salvage material, does not negate coverage under the Act even though title to the removable property passes to the contractor. While the value of the property being sold in relation to the services performed under the contract is a factor to be considered in determining coverage, the principal purpose of removal, dismantling, and demolition contracts is to furnish services through the use of service employees and thus these contracts are subject to the Act. (See also § 4.131.)

(c) *Partially exempt contracts.* (1) instances may arise in which, for the convenience of the Government, instead of awarding separate contracts for construction work subject to the Davis-Bacon Act and for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for the performance of both types of work. For example, a contracting agency may invite bids for the installation of a plumbing system or in the installation of a security alarm system in a public building and for the maintenance of the system for one year, under separate bid specifications. In such a case, the exemption provided by section 7(1) will be deemed applicable only to that portion of the contract which calls for construction activity subject to the Davis-Bacon Act. The contract documents are required to contain the clauses prescribed by § 4.6 for application to the contract obligation to furnish services through the use of service employees, and the provisions of the McNamara-O'Hara Act will apply to that portion of the contract. This is a reasonable limitation of the application of the exemption found to be necessary and proper in the public interest in accordance with the provisions of section 4(b) of the Act.

(2) Supply, services, or maintenance contracts involving construction work. The provisions of both the Davis-Bacon Act and the Service Contract Act would generally apply to contracts involving construction and nonconstruction work. The exemption provided by section 7(1) of the Act would be applicable to construction contract work in such hybrid contracts where

(i) The contract contains specific requirements for substantial amounts of construction, reconstruction, alteration, or repair work (hereinafter referred to as construction) or it is ascertainable that a substantial amount of construction work will be necessary for the performance of the contract (the work "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work (whether in absolute dollars or cost percentages) as compared to the total value of the contract); and

(ii) The construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract.

§ 4.117 Work subject to requirements of Walsh-Healey Act [Reserved]

§ 4.118 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the At by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a bill of lading citing the published tariff rate.

An administrative exemption has been provided for certain contracts where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act. See § 4.123(d). It should be noted further that only such contracts for the carriage of "freight or personnel" are exempt. Further, the exemption cannot apply where the contracts are principally for packing, crating, handling, loading, and/or storage of goods, with local drayage constituting and incidental part of the contract work. Also this exemption thus does not exclude any contracts for the transportation of mail from the application of the Act, because the term "freight" does not include the mail. (For an administrative exemption of certain contracts with common carriers for carriage of mail, see § 4.123(d).

§ 4.119 Contracts for services of communications companies.

The Act, in paragraph (4) of section 7, exempts from its provisions "any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934." This exemption is applicable to contracts with such companies for communication services regulated under the

Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

§ 4.120 Contracts for public utility services.

The Act, in paragraph (5) of section 7, exempts from its provisions "any contract for public utility services, including electric light and power, water, steam, and gas." This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration cooperatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy.

(See H. Rept. No. 948 89th Cong., 1st sess., p. 4.)

§ 4.121 Contracts for individual services.

The Act, in paragraph (6) of section 7, exempts from its provisions "any employment contract providing for direct services to a Federal agency by an individual or individuals." This exemption, which applies only to an "employment contract" for "direct services," makes it clear that the Act's application to Federal contracts for services is intended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act) provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act's provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in § 4.113, such a contract would be outside the general coverage of the Act if only the contractor's individual services would be furnished and no service employee would in any event be used in its performance.

§ 4.122 Contracts for operation of postal contract stations.

The Act, in paragraph (7) of section 7, exempts from its provisions "any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations." The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contacts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, p. 1, 89th Cong., 1st sess.).

§ 4.123 Administrative limitations, variances, tolerances, and exemptions.

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to "provide such reasonable limitations" and to "make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than § 10), but only in special circumstances where he determines that such limitation, variation, tolerances, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards." This authority is similar to that vested in the Secretary under section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40) and under section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3310).

(b) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action, except as provided in paragraph (b)(2) of this section. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission with the latter's views to the Administrator of the Wage and Hour Division, Department of Labor, whenever any wage payment issues are involved. Any request relating to an occupational safety or health issue shall by submitted to the Assistant Secretary for Occupational Safety and Health, Department of Labor.

(c) *Documentation of official action under section 4(b).* All papers and documents made a part of the official record of administrative action pursuant to section 4(b) of the Act are available for public inspection in accordance with the regulations in 29 CFR Part 70. Limitations, variations, tolerances and exemptions of general applicability and legal effect promulgated pursuant to such authority are published in the Federal Register and made a part of the rules incorporated in this Part 4. For convenience in use of the rules. They are generally set forth in the sections of this part covering the subject matter to which they relate. (See, for example, the exemption provided in §§ 4.5(b), 4.6(o), and the limitations set forth in §§ 4.115 et seq.) Any rules that are promulgated under section 4(b) of the Act relating to subject matter not dealt with elsewhere in this Part 4 will be set forth immediately following this paragraph.

(d) In addition to the statutory exemptions in § 7 of the Act (see § 4.115(c)), the following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act.

§§ 4.124—4.129 [Reserved]

§ 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts are discussed in other sections of this subpart.

(1) Aerial spraying
(2) Aerial reconnaissance for fire detection
(3) Ambulance service
(4) Barber and beauty shop services
(5) Cafeteria and food service
(6) Carpet laying (other than part of construction) and cleaning
(7) Cataloging services
(8) Chemical testing and analysis
(9) Clothing alteration and repair
(10) Computer service
(11) Concessionaire services
(12) Custodial, janitorial, and housekeeping services
(13) Data collection and/or analysis services
(14) Demolition, dismantling and/or removal of buildings and other real property (other than part of construction)
(15) Drafting and illustrating
(16) Electronic equipment maintenance and operation and engineering support services
(17) Exploratory drilling (other than part of construction)
(18) Film processing
(19) Fire fighting and protection
(20) Fueling services
(21) Furniture repair and rehabilitation
(22) Geological field surveys and testing
(23) Grounds maintenance
(24) Guard and watchman security service
(25) Inventory services
(26) Keypunching and keyverifying contracts
(27) Laboratory analysis services
(28) Landscaping (other than part of construction)
(29) Laundry and dry cleaning
(30) Linen supply services
(31) Lodging and meals
(32) Mail hauling
(33) Mailing and addressing services
(34) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and automated data processing, electronic, telecommunications, office and related business, and construction equipment
(35) Mess attendant services
(36) Mortuary services
(37) Motor pool operation
(38) Nursing home services
(39) Operation, maintenance, or logistic support of a Federal facility
(40) Packing and crating
(41) Parking services
(42) Pest control
(43) Property management
(44) Snow removal
(45) Stenographic reporting
(46) Support services at military installations
(47) Surveying and mapping services (preliminary but not directly related to construction)
(48) Taxicab services
(49) Telephone and field interview services
(50) Timber removal/sale contracts
(51) Tire and tube repairs
(52) Transporting property or personnel (except as explained in § 4.118)
(53) Trash and garbage removal
(54) Vending machine services
(55) Visual and graphic arts
(56) Warehousing or storage
(b) [Reserved]

§ 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may require the contractor to furnish typewriter parts, as the need arises, in performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. S. Rept. 798, 89th Cong., 1st Sess., p. 2; H. Rept. 948, 89th Cong., 1st Sess., p. 2. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract.

(d) Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeding of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeding, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in § 4.130 are covered, even though the use of airplanes, an expensive item of equipment, is essential in performing such services. In general, contracts under which the contractor agrees to

provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the Act. Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act. On the other hand, contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the work is performed under the supervision of Government employees, would be within the exemption in section 7(1) of the Act as contracts for construction subject to the Davis-Bacon Act. (See § 4.116.)

(e) Contracts for data collection, statistical surveys, computer services, and the like are within the general coverage of the Act even though the contractor may be required to furnish such tangible items as written reports or computer printouts, since items of this nature are considered to be of secondary importance to the services which it is the principal purpose of the contract to procure.

(f) Contracts under which the contractor receives tangible items from the Government in return for furnishing services (which items are in lieu of or in addition to monetary consideration granted by either party) are covered by the Act where the facts show that the furnishing of such services is the principal purpose of the contracts. For example, so-called "timber sales" contracts under which the contractor furnishes tree removal and related services of direct benefit to the Government are subject to the Act. The fact that such contracts may enable the contractor to receive a substantial amount of timber is of secondary importance to the services which it is the principal purpose of the Government contract to procure. The same principal applies with respect to so-called property removal or disposal contracts which involve demolition of buildings or other structures.

§ 4.132 Services and other items to be furnished under a single contract.

If the principal purpose of a contract or bid specification (i.e., a line item in a bid or contract) is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. For example, a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters under separate bid specifications. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees; however, the specifications for each might be included in a single contract with a typewriter company for the convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provisions of the Act. The "principal purpose" test would be applicable to the specification for such services rather than to the combined contract. The Act would not apply in such case to the contract obligation to furnish new typewriters, although its performance would be subject to the provisions of the Walsh-Healey Public Contracts Act if the amount was in excess of $10,000. With respect to contracts which contain separate specifications for the furnishing of services and contruction activity, see § 4.116(c).

§ 4.133 Beneficiary of contract services.

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the Government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the Government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication in the legislative history of any intent that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract is to provide services through the use of service employees, the contract is within the general coverage of the Act, regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) Because of some indications that members of Congress considered that a contract to operate a concession in a National Park for the purpose of furnishing food or lodging services to the general public, rather than to the Government or to personnel engaged in its business, should not be considered subject to the Act, the Department of Labor does not require the application of the Act to such contracts.

§ 4.134 Contracts outside the Act's coverage.

(a) Contracts entered into by agencies other than those of the Federal Government or the District of Columbia as described in §§ 4.107–4.108 are not within the purview of the Act. Thus, the Act does not cover service contracts entered into with any agencies of Puerto Rico, the Virgin Islands, American Samoa, or Guam acting in behalf of their respective local governments. Similarly, it does not cover service contracts entered into by agencies of States or local public bodies, not acting as agents for or on behalf of the United States or the District of Columbia, even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

(b) Further, as already noted in §§ 4.111–4.113, the Act does not apply to Government contracts or bid specifications which do not have as their principal purpose the furnishing of services, or which call for no services to be furnished within the United States or through the use of service employees as those terms are defined in the Act. Clearly outside the Act's coverage for these reasons are such contracts as those for the purchase of tangible products which the Government needs (e.g. vehicles, office equipment, and supplies), for the logistic support of an air base in a foreign country, or for the services of a lawyer to examine the title to land. Similarly, where the Government contracts for a lease of building space for Government occupancy and as an incidental part of the lease agreement the building owner agrees to furnish general janitorial and other building services through the use of service emloyees, the leasing of the space rather than the furnishing of the building services is the principal

purpose of the contract, and the Act does not apply. However, if the contract contains a separate line item or items which requires the contractor to furnish specified levels and frequencies of janitorial, security, or other maintenance services, the requirement for such services is considered to be a separate specification the principal purpose of which is the furnishing of services, and as set forth in § 4.132, the Act would apply to such specification. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. Such a contract is to be distinguished from contracts for the live storage of vehicles which are delivered into the possession or custody of the contractor, who will provide the required services including the parking or retrieval of the vehicles.

(c) There are a number of types of contracts which, while outside the Act's coverage in the usual case, may be subject to its provisions under the conditions and circumstances of a particular procurement, because these may be such as to require a different view of the principal purpose of the contract. Thus, the ordinary contract for the recapping of tires would have as its principal purpose the manufacture and furnishing of rebuilt tires for the Government rather than the furnishing of services through the use of service employees, and thus would be outside the Act's coverage. Similarly, contracts calling for printing, reproduction, and duplicating ordinarily would appear to have as their principal purpose the furnishing in quantity of printed, reproduced or duplicated written materials rather than the furnishing of reproduction services through the use of service employees. However, in a particular case, the terms, conditions, and circumstances of the procurement may be such that the facts would show its purpose to be chiefly the furnishing of services (e.g. repair services, typesetting, photocopying, editing, etc.), and where such services require the use of service employees the contract would be subject to the Act unless excluded therefrom for some other reason.

§§ 4.135–4.139 [Reserved]

Determining Amount of Contract

§ 4.140 Significance of contract amount.

As set forth in § 4.104 and in the requirements of §§ 4.6–4.7, the obligations of a contractor with respect to labor standards differ in the case of a covered and nonexempt contract, depending on whether the contract is or is not in excess of $2,500. Rules for resolving questions that may arise as to whether a contract is or is not in excess of this figure are set forth in the following sections.

§ 4.141 General criteria for measuring amount.

(a) In general, the contract amount is measured by the consideration agreed to be paid, whether in money or other valuable consideration, in return for the obligations assumed under the contract. Thus, even though a contractor, such as a wrecker entering into a contract with the Government to raze a building on a site which will remain vacant, may not be entitled to receive any money from the Government for such work under his contract or may even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of $2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount. In addition, concession contracts are considered to be contracts in excess of $2,500 if the contractor's gross receipts under the contract may exceed $2,500.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Therefore, if an agency procures continuing services through the issuance of monthly purchase orders, the amount of the contract for purposes of application of the Act is not measured by the amount of an individual purchase order. In such cases, if the continuing services were procured through formal advertising, the contract term would typically be for one year, and the monthly purchase orders must be grouped together to determine whether the yearly amount may exceed $2,500. However, a purchase order for services which are not continuing but are performed on a one-time or sporadic basis and which are not performed under a requirements contract, need not be equated to a yearly amount. (See § 4.142(b)). In addition, where an invitation is for services in an amount in excess of $2,500 and bidders are permitted to bid on a portion of the services not amounting to more than $2,500, the amounts of the contracts awarded separately to individual and unrelate bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of $2,500 this amount will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to $2,500 or less.

§ 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act, (and any bid specification therefor) which is indefinite in amount is required to contain the clauses prescribed in § 4.6 for contracts in excess of $2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed $2,500 in any event.

(b) Where contracts or agreements between a Government agency and propective purveyors of services are negotiated, which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intendment of the Act under principles judicially established in United Biscuit Co. v. Wirtz, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under it terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

Changes in Contract Coverage

§ 4.143 Effects of changes or extensions of contracts, generally.

(a) Sometimes an existing service contract is modified, amended, or extended in such a manner that the changed contract is considered to be a new contract for purposes of the application of the Act's provisions. The general rule with respect to such contracts is that, whenever changes affecting the labor requirements are made in the terms of the contract, the

provisions of the Act and the regulations thereunder will apply to the changed contract in the same manner and to the same extent as they would to a wholly new contract. However, contract modifications or amendments (other than contract extensions) that are unrelated to the labor requirements of a contract will not be deemed to create a new contract for purposes of the Act. In addition, only significant changes related to labor requirements will be considered as creating new contracts. This limitation on the application of the Act has been found to be in accordance with the provisions of section 4(b) of the Act.

(b) Also, whenever the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time, rather than being granted extra time to fulfill his original commitment, the contract extension is considered to be a new contract for purposes of the application of the Act's provisions. All such "new" contracts as discussed above require the insertion of a new or revised wage determination in the contract as provided in § 4.5.

§ 4.144 Contract modifications affecting amount.

Where a contract which was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer will immediately request a wage determination from the Department of Labor and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

§ 4.145 Extended term contracts.

(a) Sometimes service contracts are entered into for a term of years; however, their continuation in effect is subject to the appropriation by Congress of funds for each new fiscal year. In such event, for purposes of this Act, a contract shall be deemed entered into at the beginning of each new fiscal year during which the terms of the original contract are made effective by an appropriation for the purpose. In other cases a service contract, entered into for a specified term by a Government agency, may contain a provision such as an option clause under which the agency may unilaterally extend the contract for a period of the same length or other stipulated period. Since the exercise of the option results in the rendition of services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the additional period is a wholly new contract with respect to application of the Act's provisions and the regulations thereunder.

(b) With respect to multi-year service contracts which are not subject to annual appropriations (for example, concession contracts which are funded through the concessionaire's sales, certain research and development contracts which are funded with so-called "no year money" or contracts awarded by instrumentalities of the United States, such as the Federal Reserve Banks, which do not receive appropriated funds), section 4(d) of the Act allows such contracts to be awarded for a period of up to five years on the condition that the multi-year contracts will be amended no less often than once every two years to incorporate any new Service Contract Act wage determination which may be applicable. Accordingly, unless the contracting agency is notified to the contrary (see § 4.4(d)), at the end of the second year and again at the end of the fourth year, etc. such contracts are treated as wholly new contracts for purposes of the application of the Act's provisions and regulations thereunder. The two year period is considered to begin on the date that the contractor commences performance on the contract (i.e., anniversary date) rather than on the date of contract award.

Period of Coverage

§ 4.146 Contract obligations after award, generally.

A contractor's obligation to observe the provisions of the Act arises on the date the contractor is informed that award of the contract has been made, not necessarily the date of formal execution. However, the contractor is required to comply with the provisions of the Act and regulations thereunder only while the employees are performing on the contract, provided the contractor's records make clear the period of such performance. (See also § 4.179.) If employees of the contractor are required by the contract to complete certain preliminary training or testing prior to the commencement of the contract services, or if there is a phase-in period which allows the new contractor's employees to familiarize themselves with the contract work so as to provide a smooth transition between contractors, the time spent by employees undertaking such training or phase-in work is considered to be hours worked on the contract and must be compensated for even though the principal contract services may not commence until a later date.

§§ 4.147–4.149 [Reserved]

Employee Covered by the Act

§ 4.150 Employee coverage generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all employees engaged in performing work on a covered contract entered into by the contractor with Federal Government, regardless of whether they are the contractor's employees or those of any subcontractor under such contract. All employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing othe duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)), as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of sections 2 (a)(1), (2), and 4(c) of the Act.

§ 4.151 Employees covered by provision of section 2(a).

The provisions of sections 2(a) and 4(c) of the Act prescribe labor standards requirements applicable, except as otherwise specifically provided, to every contract in excess of $2,500 which entered into by the United States or the District of Columbia for the principal purpose of furnishing services in the United States through the use of service employees. These provisions apply to all service employees engaged in the performance of such a contract or any subcontract thereunder. The Act, in section 8(b) defines the term "service employee". The general scope of the definition is considered in § 4.113(b) of this subpart.

§ 4.152 Employees subject to prevailing compensation provisions of sections 2(a) (1) and (2) and 4(c).

(a) Under section 2(a) (1) and (2) of the Act, minimum monetary wages and fringe benefits to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor or his authorized representative in accordance with prevailing rates and fringe benefits for such employees in the locality or in accordance with the rates contained in a predecessor contractor's collective bargaining agreement, as appropriate, and are required to be specified in such contracts and subcontracts thereunder. All service employees of the classes who actually perform the specific services called for by the contract (e.g. janitors performing on a contract for office cleaning; stenographers performing on a contract for stenographic reporting) are covered by the provisions specifying such minimum monetary wages and fringe benefits for such classes of service employees.

(b) The duties which an employee actually performs govern the classification and the rate of pay to which the employee is entitled under the applicable wage determination. Some job classifications listed in an applicable wage determination are descriptive by title and have commonly understood meanings, (e.g., janitors, security guards, pilots, etc.). In such situations, detailed position descriptions may not be included in the wage determination. However, in cases where additional descriptive information is needed to inform users of the scope of duties included in the classification, the wage determination will generally contain detailed position descriptions based on the data source relied upon for the issuance of the wage determination.

(c) Some wage determinations will list a series of classes within a job classification family, i.e., Computer Operators, Class A, B, and C, or Electronic Technicians, Class A, B, and C, or Clerk Typist, Class A and B. Generally, the lowest level listed for a job classification family is considered to be the entry level and establishment of a lower level through conformance (§ 4.6(b)(2)) is not permissible. Likewise, unless listed in an applicable wage determination, so-called trainee classifications are not permissible and cannot be conformed under § 4.6(b)(2). Helpers in skilled maintenance trades (for example, electricians, machinists, automobile mechanics, etc.) whose duties constitute, in fact, separate and distinct jobs, may be conformed. However, conformance may not be used to artifically split or subdivide classifications listed in the wage determination. In other words, conforming procedures may not be used if the work which an employee performs under the contract is within the scope of any classification listed on the wage determination, regardless of job title. Subminimum rates for apprentices, student learners, and handicapped workers are permissible under the conditions discussed in § 4.6(o).

§ 4.153 Inapplicability of prevailing compensation provisions to some employees.

There may be employees used by a contractor or subcontractor in performing a service contract in excess of $2,500 which is subject to the Act, whose services, although necessary to the performance of the contract, are not subject to minimum monetary wage or fringe benefit provisions contained in the contract pursuant to section 2(a). This may occur because such employees are not directly engaged in performing the specified contract services. An example might be a laundry contractor's billing clerk performing billing work with respect to the items laundered. In all such situations, the employees who are necessary to the performance of the contract but not directly engaged in the performance of the specified contract services, are nevertheless, subject to the minimum wage provision of section 2(b) (see § 4.150) requiring payment of not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act to all employees working on a covered contract, unless specifically exempt. However, in situations where minimum monetary wages and fringe benefits have not been specified in the contract for a particular class or classes of service employees because the wage and fringe benefit determinations applicable to the locality have been made only for other classes of service employees who will perform the contract work, the employer will be required to pay the monetary wages and fringe benefits which may be specified for such classes of employees pursuant to the conformance procedures provided in § 4.6(b). In no event, however, may the minimum wage rate for any class of service employees be less than the minumum wage rate specified under section 6(a)(1) of the Fair Labor Standards Act.

§ 4.154 Employees covered by sections 2(a) (3) and (4).

The safety and health standards of section 2(a)(3) and the notice requirements of section 2(a)(4) of the Act (see § 4.183) are applicable, in the absence of a specific exemption, to every service employee engaged by a contractor or subcontractor to furnish services under a contract subject to section 2(a) of the Act.

§ 4.155 Employee coverage does not depend on form of employment contract.

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. In other words, any person, except those discussed in § 4.156 below, who performs work called for by a contract subject to the Act is, per se, a service employee. Thus, for example, a person's alleged status as an "owner-operator" or an "independent contractor" is immaterial in determining coverage under the Act and all such persons performing the work of service employees must be compensated in accordance with the Act's requirements.

§ 4.156 Employees in bona fide executive, administrative, or professional capacity.

The term "service employee" as defined in Section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR Part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR Part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in Part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

Subpart D—Compensation Standards

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any employee engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in

any such contract exceeding $2.500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6–4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because this statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is $2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

§ 4.160 Effect of section 6(e) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95–151).

§ 4.161 Minimum monetary wages under contracts exceeding $2,500.

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of $2,500 to service employees engaged in performance of the contract or subcontract are required to be specified in the contract and in all subcontracts (see § 4.6). Pursuant to the statutory scheme provided by sections 2(a)(1) and 4(c) of the Act, every covered contract (and any bid specification therefor) which is in excess of $2,500 shall contain a provision specifying the minimum monetary wages to be paid the various classes of service employees engaged in the performance of the contract of any subcontract thereunder, as determined by the Secretary or his authorized representative in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement applied to the employees of a predecessor contractor, in accordance with the rates for such employees provided for in such agreement; including prospective wage increases as provided in such agreement as a result of arm's-length negotiations. In no case may such wages be lower than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. (For a detailed discussion of the application of section 4(c) of the Act, see § 4.163.) If some or all of the determined wages in a contract fall below the level of the Fair Labor Standards Act minimum by reason of a change in that rate by amendment of the law, these rates become obsolete and the employer is obligated under section 2(b)(1) of the Service Contract Act, to pay the minimum wage rate established by the amendment as of the date it becomes effective. A change in the Fair Labor Standards Act minimum by operation of law would also have the same effect on advertised specifications or negotiations for covered service contracts, i.e., it would make ineffective and would supplant any lower rate or rates included in such specifications or negotiations whether or not determined. However, unless affected by such a change in the Fair Labor Standards Act minimum wage, by contract changes necessitating the insertion of new wage provisions (see §§ 4.143–4.145 or by the requirements of section 4(c) of the Act (see § 4.163)), the minimum monetary wage rate specified in the contract for each of the classes of service employees for which wage determinations have been made under section 2(a)(1) will continue to apply throughout the period of contract performance. No change in the obligation of the contractor or subcontractor with respect to minimum monetary wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract. Such wage determinations are effective for contracts not yet awarded, as provided in § 4.5(a).

§ 4.162 Fringe benefits under contracts exceeding $2,500.

(a) Pursuant to the statutory scheme provided by sections 2(a)(2) and 4(c) of the Act, every covered contract in excess of $2,500 shall contain a provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality. Where a collective bargaining agreement applied to the employees of a predecessor contractor, the various classes of service employees engaged in the performance of the contract or any subcontract must be provided the fringe benefits, including prospective or accrued fringe benefit increases, provided for in such agreement as a result of arm's-length negotiations. (For a detailed discussion of section 4(c) of the Act, see § 4.163.) Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.

(b) Under this provision, the fringe benefits, if any, which the contractor or subcontractor is required to furnish his service employees engaged in the performance of the contract are specified in the contract documents (see § 4.6). How he may satisfy this obligation is dealt with in §§ 4.170–4.177 of this part. A change in the fringe benefits required by the contract provision will not result from the mere fact that other or additional fringe benefits are determined to be prevailing for such employees in the locality at a time subsequent to the award but before completion of the contract. Such fringe benefit determinations are effective for contracts not yet awarded (see § 4.5(a)), or in the event that changes in an existing contract requiring their insertion for prospective application have occurred (see §§ 4.143–4.145). However, none of the provisions of this subsection may be construed as altering a successor contractor's obligations under section 4(c) of the Act. (See § 4.163.)

§ 4.163 Section 4(c) of the Act.

(a) Section 4(c) of the Act provides that no "contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective bargaining agreement as a result of arm's-length negotiations, to

which such service employees would have been entitled if they were employed under the predecessor contract: Provided, that in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality." Under this provision, the successor contractor's sole obligation is to insure that all service employees are paid no less than the wages and fringe benefits to which such employees would have been entitled if employed under the predecessor's collective bargaining agreement (i.e., irrespective of whether the successor's employees were or were not employed by the predecessor contractor). The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's collective bargaining agreement and does not extend to other items such as seniority, grievance procedures, work rules, overtime, etc.

(b) Section 4(c) is self-executing. Under section 4(c), a successor contractor is statutorily obligated to pay no less than the wage rates and fringe benefits which the predecessor contractor paid pursuant to a collective bargaining agreement. This is a direct statutory obligation and requirement placed on the successor contractor by section 4(c) and is not contingent or dependent upon the issuance or incorporation in the contract of a wage determination based on the predecessor contractor's collective bargaining agreement. Pursuant to section 4(b) of the Act, a variation has been granted which limits the self-executing application of section 4(c) in the circumstances and under the conditions described in § 4.1(b) of this part. It must be emphasized, however, that the variation in § 4.1(b) is applicable only if the contracting officer has given both the incumbent (predecessor) contract and the employees' collective bargaining representative notification at least 30 days in advance of any estimated procurement date.

(c) *Variance hearings.* The regulations and procedures for hearings pursuant to section 4(c) of the Act are contained in § 4.10 of Subpart A and Parts 6 and 8 of this title. If, as the result of such hearing, some or all of the wage rate and/or fringe benefit provisions of a predecessor contractor's collective bargaining agreememt are found to be substantially at variance with the wage rates and/or fringe benefits prevailing in the locality, the Administrator will cause a new wage determination to be issued in accordance with the decision of the Administrative Law Judge or the Board of Service Contract Appeals. Since "it was the clear intent of Congress that any revised wage determinations resulting from a section 4(c) proceeding were to have validity with respect to the procurement involved" (53 Comp. Gen. 401 402, 1973), the solicitation, or the contract if already awarded, must be amended to incorporate the newly issued wage determination. Such new wage determination shall be made applicable to the contract as of the date of the Administrative Law Judge's decision or as of the date of the decision of the Board of Service Contract Appeals. The legislative history of the 1972 Amendments makes clear that the collectively bargained "wages and fringe benefits shall continue to be honored * * * unless and until the Secretary finds, after a hearing, that such wages and fringe benefits are substantially at variance with those prevailing in the locality for like services" (S. Rept. 92–1131, 92nd Cong., 2d Sess. 5). Thus, variance decisions do not have application retroactive to the commencement of the contract.

(d) Sections 2(a) and 4(c) must be read in conjunction. The Senate report accompanying the bill which amended the Act in 1972 states that "Sections 2(a)(1), 2(a)(2), and 4(c) must be read in harmony to reflect the statutory scheme." (S. Rept. 92–1131, 92nd Cong., 2nd Sess. 4.) Therefore, since section 4(c) refers only to the predecessor contractor's collective bargaining agreement, the reference to collective bargaining agreements in sections 2(a)(1) and 2(a)(2) can only be read to mean a predecessor contractor's collective bargaining agreement. The fact that a successor contractor may have its own collective bargaining agreement does not negate the clear mandate of the statute that the wages and fringe benefits called for by the predecessor contractor's collective bargaining agreement shall be the minimum payable under a new (successor) contract. 48 Comp. Gen. 22, 23–24 (1968). In addition, because section 2(a) only applies to covered contracts in excess of $2,500, the requirements of section 4(c) likewise apply only to successor contracts which may be in excess of $2,500. However, if the successor contract is in excess of $2,500, section 4(c) applies regardless of the amount of the predecessor contract. (See §§ 4.141–4.142 for determining contract amount.)

(e) The operative words of section 4(c) refer to "contract" not "contractor". Section 4(c) begins with the language "[n]o contractor or subcontractor under a *contract, which succeeds a contract* subject to this Act" (emphasis supplied). Thus, the statute is applicable by its terms to a successor contract without regard to whether the successor contractor was also the predecessor contractor. A contractor may become its own successor because it was the successful bidder on a recompetition of an existing contract, because the contracting agency exercises an option or otherwise extends the term of the existing contract, etc. (See §§ 4.143–4.145). Further, since sections 2(a) and 4(c) must be read in harmony to reflect the statutory scheme, it is clear that the provisions of section 4(c) apply whenever the Act or the regulations require that a new wage determination be incorporated into the contract (53 Comp. Gen 401, 404–6 (1973)).

(f) *Collective bargaining agreement must be applicable to work performed on the predecessor contract.* Section 4(c) will be operative only if the employees who worked on the predecessor contract were actually paid in accordance with the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement. Thus, for example, section 4(c) would not apply if the predecessor contractor entered into a collective bargaining agreement which did not become effective until after the expiration of the predecessor contract. Likewise, the requirements of section 4(c) would not apply if the predecessor contractor's collective bargaining agreement applied only to other employees of the firm and not to the employees working on the contract or if the predecessor contract contained a Service Contract wage determination requiring the payment of wage rates or fringe benefits in excess of those required by the predecessor's collective bargaining agreement. In the latter situation, the predecessor would be in violation of the Act if the employees working on the contract were paid only the wages and fringe benefits provided for in the collective bargaining agreement.

(g) *Contract reconfigurations.* As a result of changing priorities, mission requirements, or other considerations, contracting agencies may decide to restructure their support contracts. Thus, specific contract requirements from one contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated contract. However, the protections afforded service employees

under section 4(c) are not lost or negated because of such contract reconfigurations, and the successor contractor's collectively bargained rates follows identifiable contract work requirements into new or consolidated contracts.

(h) *Interruption of contract services.* Other than the requirement that substantially the same services be furnished, the requirement for arm's-length negotiations and the provision for variance hearings, the Act does not impose any other restrictions on the application of section 4(c). Thus, the application of section 4(c) is not negated because contracting authority may change and the successor contract is awarded by a different contracting agency. Also, there is no requirement that the successor contract commence immediately after the completion or termination of the predecessor contract, and an interruption of contract services does not negate the application of section 4(c). Contract services may be interrupted because the Government facility is temporarily closed for renovation, or because a predecessor defaulted on the contract or because a bid protest has halted a contract award requiring the Government to perform the services with its own employees. In all such cases, the requirements of section 4(c) would apply to any successor contract which may be awarded after the temporary interruption or hiatus. The basic principle in all of the preceding examples is that successorship provisions of section 4(c) apply to the full term successor contract. Therefore, temporary interim contracts, which allow a contracting agency sufficient time to solicit bids for a full term contract, also do not negate the application of section 4(c) to a full term successor contract.

(i) *Place of performance.* The successorship requirements of section 4(c) apply to all contracts for substantially the same services as were furnished under the predecessor contract. The Act does not distinguish between successor contracts performed at the same Government installation and successor contracts performed at the location of a successful bidder, and the requirements of section 4(c) apply equally to both types of contracts.

(j) *Interpretation of wage and fringe benefit provisions of wage determinations issued pursuant to sections 2(a) and 4(c).* Wage determinations which are issued for successor contracts subject to section 4(c) are intended to accurately reflect the rates and fringe benefits set forth in the predecessor's collective bargaining agreement. However, failure to include in the wage determination any job classification, wage rate, or fringe benefit encompassed in the collective bargaining agreement does not relieve the successor contractor of the statutory requirement to comply at a minimum with the terms of the collective bargaining agreement insofar as wages and fringe benefits are concerned. Since the successor's obligations are governed by the terms of the collective bargaining agreement, any interpretation of the wage and fringe benefit provisions of the wage determination must be based on the intent of the parties to the collective bargaining agreement to the extent that such interpreatation is not violative of law. Therefore, some of the principles discussed in §§ 4.170–4.177 regarding specific interpretations of the fringe benefit provisions of prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). However, as provided in section 2(a)(2), a contractor may satisfy its fringe benefit obligations under any wage determination "by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash" in accordance with the rules and regulations set forth in § 4.177 of this Subpart.

(k) No provision of this section shall be construed as permitting a successor contractor to pay its employees less than the wages and fringe benefits to which such employees would have been entitled under the predecessor contractor's collective bargaining agreement. Thus, some of the principles discussed in § 4.167 may not be applicable in section 4(c) successorship situations. For example, if the predecessor contractor's collective bargaining agreement did not provide for the deduction from employees wages, the reasonable cost or fair value for providing board, lodging, or other facilities, then the successor also may not include such costs as part of the applicable minimum wage specified in the wage determination. Likewise, unless the predecessor contractor's agreement allowed any tip credit (§ 4.6(q)), the successor contractor may not take a tip credit toward satisfying the minimum wage requirements under sections 2(a)(1) and 4(c).

§ 4.164 [Reserved]

§ 4.165 Wage payments and fringe benefits—in general.

(a)(1) Monetary wages specified under the Act shall be paid to the employees to whom they are due promptly and in no event later than one pay period following the end of the pay period in which they are earned. No deduction, rebate, or refund is permitted, except as hereinafter stated. The same rules apply to cash payments authorized to be paid with the staturory monetary wages as equivalents of determined fringe benefits (see § 4.177).

(2) The Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions (See § 4.176 regarding fringe benefit payments to temporary and part-time employees.)

(b) The Act does not prescribe the length of the pay period. However, for purposes of administration of the Act, and to conform with practices required under other statutes that may be applicable to the employment, wages and hours worked must be calculated on the basis of a fixed and regularly recurring workweek of seven consecutive 24-hour workday periods, and the records must be kept on this basis. It is appropriate to use this workweek for the pay period. A bi-weekly or semimonthly, pay period may, however, be used if agreed upon by the employer and his employees. A pay period longer than semi-monthly is not recognized as appropriate for service employees and wage payments at greater intervals will not be considered as constituting proper payments in compliance with the Act.

(c) The prevailing rate established by a wage determination under the Act is a minimum rate. A contractor is not precluded from paying wage rates in excess of those determined to be prevailing in the particular locality. Nor does the Act affect or require the changing of any provisions of union contracts specifying higher monetary wages or fringe benefits than those contained in an applicable determination. However, if a determination for a class of service employees contains a wage or fringe benefit provision which is higher than that specified in an existing union agreement, the determination's provision will prevail for any work performed on a contract subject to the determination.

§ 4.166 Wage payments—unit of payment.

The standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly wage rate is not, however, the only unit for payment of wages that may be used

for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

§ 4.167 Wage payments—Medium of payment.

The wage payment requirements under the Act for monetary wages specified under its provisions will be satisfied by the timely payment, finally and unconditionally or "free and clear", of such wages to the employee either in cash or negotiable instrument payable at par. Scrip, tokens, credit cards, "dope checks", coupons, and similar devices which permit the employer to retain and prevent the employer from acquiring control of money due for the work until some time after the pay day for the period in which it was earned, are not proper mediums of payment under the Act. If, as is permissible, they are used as a convenient device for measuring earnings or allowable deductions during a single pay period, the employee cannot be charged with the loss or destruction of any of them and the employer may not, because the employee has not actually redeemed them credit itself with any which remain outstanding on the pay day. In determining whether it has met the requirements of the Act. The employer may not include the cost of fringe benefits or equivalents furnished as required under section 2(a)(2) of the Act, as a credit toward the monetary wages it is required to pay under section 2(a)(1) or 2(b) of the Act (see § 4.170). However, the employer may generally include, as a part of the applicable minimum wage which it is required to pay under the Act, the reasonable cost or fair value, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities," as defined in Part 531 of this title, in situations where such facilities are customarily furnished to employees, for the convenience of the employees, and the employees acceptance of them is voluntary and uncoerced. The determination of reasonable cost or fair value will be in accordance with the Administrator's regulations under the Fair Labor Standards Act, contained in such Part 531 of this title. While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may generally be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531 (See also § 4.6(q).) The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 50 percent of the minimum wage applicable under section 6 of that Act, through December 31, 1978, 45 percent effective January 1, 1979 and 40 percent effective January 1, 1980. In no event shall the sum credited be in excess of the value of tips actually received by the employee. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed $1.32 per hour beginning January 1, 1978, $1.30 per hour beginning January 1, 1980 and $1.34 per hour after December 31, 1980. (See § 4.163(k) for exceptions in section 4(c) situations.)

§ 1.168 Wage payments—deductions from wages paid.

(a) The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him. Authorized deductions are limited to those required by law, such as taxes payable by employees required to be withheld by the employer and amounts due employees which the employer is required by court order to pay to another; deductions allowable for the reasonable cost or fair value of board, lodging, and facilities furnished as set forth in § 4.167; and deductions of amounts which are authorized to be paid to third persons for the employee's account and benefit pursuant to his voluntary assignment or order or a collective bargaining agreement with bona fide representatives of employees which is applicable to the employer. Deductions for amounts paid to third persons on the employee's account which are not so authorized or are contrary to law or from which the contractor, subcontractor or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they cut into the wage required to be paid under the Act. The principles applied in determining the permissibility of deductions for payments made to third persons are explained in more detail in §§ 531.38 - 531.40 of this title.

(b) *Cost of maintaining and furnishing uniforms.* If the employees are required to wear uniforms either by the employer, the nature of the job, or the Government contract, then the cost of furnishing and maintaining the uniforms is deemed to be a business expense of the employer and such cost may not be borne by the employees to the extent that to do so would reduce the employee's compensation below that required by the Act. Since it may be administratively difficult and burdensome for employers to determine the actual cost incurred by all employees for maintaining their own uniforms, payment in accordance with the following standards is considered sufficient for the contractor to satisfy its wage obligations under the Act:

(1) The contractor furnishes all employees with an adequate number of uniforms without cost to the employees or reimburses employees for the actual cost of the uniforms. (2) Where uniform cleaning and maintenance is made the responsibility of the employee, the contractor reimburses all employees for such cleaning and maintenance at the rate of $2.90 per week (or 58 cents a day), increasing to $3.10 a week (or 62 cents a day) as of January 1, 1980 and to $3.35 a week (or 67 cents a day) as of January 1, 1981. Since employees are generally required to wear a clean uniform each day regardless of the number of hours the employee may work that day, the preceding weekly amounts generally may be reduced to the stated daily equivalent but not an hourly equivalent. A contractor may reimburse employees at a different rate if the contractor furnishes affirmative proof as to the actual cost to the employees maintaining their uniforms or if a different rate is provided for in a bona fide collective bargaining agreement covering the employees working on the contract.

(c) Stipends, allaowances or other payments made directly to an employee by a party other than the employer (such as a stipend for training paid by the Veteran Administration) are not part of "wages" and the employer may not

claim credit for such payments toward its monetary obligations under the Act.

§ 4.169 Wage payments—work subject to different rates.

If an employee during a workweek works in different capacities in the performance of the contract and two or more rates of compensation under section 2 of the Act are applicable to the classes of work which he performs, he must be paid the highest of such rates for all hours worked in the workweek unless it appears from the employer's records or other affirmative proof which of such hours were included in the periods spent in each class of work. The rule is the same where such an employee is employed for a portion of the workweek in work not subject to the Act, for which compensation at a lower rate would be proper if the employer by his records or other affirmative proof, segregated the worktime thus spent.

§ 4.170 Furnishing fringe benefits or equivalents.

(a) *General.* Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages, by the contractor or subcontractor to the employees engaged in performance of the contract, as specified in the determination of the Secretary or his authorized representative and prescribed in the contract documents. Section 2(a)(2) of the Act provides that the obligation to furnish the specified benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." The governing rules and regulations for furnishing such equivalents are set forth in § 4.177 of this Subpart. An employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit obligations under the Act.

(b) *Meeting the requirement, in general.* The various fringe benefits listed in the Act are illustrative of those which may be found prevailing for services in a particular locality. The benefits which an employer will actually be required to furnish employees performing on a particular contract will be specified in the contract documents. A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, retirement, or health insurance, by irrevocably paying the specified contributions for fringe benefits to an independent trustee or other third person pursuant to an existing "bona fide" fund, plan, or program on behalf of employees engaged in work subject to the Act's provisions. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of "bona fide" fringe benefits or by making equivalent payments in cash to the employee, in accordance with the regulations in § 4.177 of this Subpart.

§ 4.171 "Bona fide" fringe benefits.

(a) To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:

(1) The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor-employee contributory plan. However, any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with § 4.168. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

(3) The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan or the benefits provided under the plan must be specified or definitely determinable on an acturarial basis.

(4) As set forth in § 4.170(b), the contractor's contributions must be paid irrevocably to a trustee or other third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust of fund must be set up in such a way that in no event will the contractor be able to recapture any of the contributions paid in nor in any way divert the funds to his own use or benefit.

(5) The benefit plans or trust must be approved by the Internal Revenue Service as satisfying the requirements of section 401(a) of the Interal Revenue Code and meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. and regulations thereunder.

(6) It should also be noted that such plans must meet certain other criteria as set forth in § 778.215 of 29 CFR 778 in order for any contributions to be excluded from computation of the regular rate of pay for overtime purposes under the Fair Labor Standards Act (§§ 4.180–4.182).

(b) Self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which be their nature are normally unfunded) under which contractors typically maintain their own accounts to cover fringe benefit payments are not considered "bona fide" plans or equivalent benefits for purposes of the Act.

(c) No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a "bona fide" fringe benefit for purposes of the Act.

(d) The furnishing to an employee of board, lodging, or other facilities under the circumstances described in § 4.167, the cost or value of which is creditable toward the monetary wages specified under the Act, may not be used to offset any fringe benefits specified under the Act, may not be used to offset any fringe benefits specified in the contract, as such items and facilities are not fringe benefits or equivalent benefits for purposes of the Act.

(e) The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items, for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's Government contract, by

law, or by the nature of the work to wear such items. See also § 4.168.

(f) Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits for purposes of the Act.

§ 4.172 Meeting requirements in particular fringe benefits—in general.

Where a fringe benefit determination specifies the amount of the employer's contribution to provide the benefit, the amount specified is the actual cash amount that must be provided by the employer for the employee. No deduction from the specified amount may be made to cover any administrative costs which may be incurred by the contractor in providing the benefits, as such costs are properly a business expense of the employer. If prevailing fringe benefits for insurance or retirement are determined in a stated amount, and the employer provides such benefits through contribution in a lesser amount, he will be required to furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefits which he provides. Unless otherwise specified in the particular wage determination, such as one reflecting collectively bargained fringe benefit requirements, issued pursuant to Section 4(c) of the Act, every employee performing on a covered contract must be furnished the fringe benefits required by that determination for all hours spent working (and paid for) on that contract up to a maximum of 40 hours per week and 2,080 (i.e., 52 weeks of 40 hours each) per year, as these are the typical number of nonovertime hours of work in a week, and in a year, respectively. Since the Act's fringe benefit requirements are applicable on a contract-by-contract basis, employees performing on more than one contract subject to the Act must be furnished the full amount of fringe benefits to which they are entitled under each contract and applicable wage determination. Where a fringe benefit determination has been made requiring employer contributions for a specified fringe benefit in a stated amount per hour, a contractor employing employees part of the time on contract work and part of the time on other work, may only credit against the hourly amount required for the hours spent on the contract work, the corresponding proportionate part of a weekly, monthly, or other amount contributed by him for such fringe benefits or equivalent benefits for such employees. If , for example, the determination requires health and welfare benefits in the amount of 10 cents an hour and the employer provides hospitalization insurance for such employees at a cost of $3.50 a week, the employer may credit 8.75 cents an hour (40 ÷ 350) toward his fringe benefit obligation for an employee, in a particular workweek. If an employee works 35 hours on the contract work and 5 hours on other work, the employer cannot allocate the entire $3.50 to the 35 hours spent on contract work and take credit for 10 cents per hour in that manner, but must spread the cost over the full forty hours.

§ 4.173 Meeting requirements for vacation fringe benefits.

(a) Determining length of service for vacation eligibility. It has been found that for many types of service contracts performed at Federal facilities a successor contractor will utilize the employees of the previous contractor in the performance of the contract. The employees typically work at the same location providing the same services to the same clientele over a period of years, with periodic, often annual, changes of employer. The incumbent contractor, when bidding on a contract, must consider his liability for vacation benefits for those workers in his employ. If prospective contractors who plan to employ the same personnel were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such enployees entitlement to prevailing vacation benefits.

(1) Accordingly, most vacation fringe benefit determinations issued under the Act require an employer to furnish to employees working on the contract a specified amount of paid vacation upon completion of a specified length of service with a contractor or successor. This requirement may be stated in the determination, for example, as "one week paid vacation after one year of service with a contractor or successor" or by a determination which calls for "one week's paid vacation after one year of service". Unless specified otherwise in an applicable fringe benefit determination, an employer must take the following two factors into consideration in determining when an employee has completed the required length of service to be eligible for vacation benefits:

(i) The total length of time spent by an employee in any capacity in the continuous service of the present (successor) contractor, including both the time spent in performing on regular commercial work and the time spent in performing on the Government contract itself, and

(ii) Where applicable, the total length of time spent in any capacity as an employee in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same Federal facility.

(2) The application of these principles may be illustrated by the example given above of a fringe benefit determination calling for "one week paid vacation after one year of service with a contractor or successor". In that example, if a contractor has an employee who has worked for him for 18 months on regular commercial work and only for 6 months on a Government service contract, that employee would be eligible for the one week vacation since his total service with the employer adds up to more than 1 year. Similarly, if a contractor has an employee who worked for 16 months under a janitorial service contract on a particular Federal base for two different predecessor contractors, and only 8 months with the present employer, that employee would also be considered as meeting the "after one year of service" test and would thus be eligible for the specified vacation.

(3) The "contractor or successor" requirement set forth in paragraph (a)(1) of this section is not affected by the fact that a different contracting agency may have contracted for the services previously or by the agency's dividing and/or combining contract function. However, prior service as a Federal employee is not counted toward an employee's eligibility for vacation benefits under fringe benefit determinations issued pursuant to the Act.

(4) Some fringe benefit determinations may require an employer to furnish a specified amount of paid vacation upon completion of a specified length of service *with the employer,* for example, "one week paid vacation after one year of service with an employer". Under such determinations, only the time spent in performing on commercial work and on Government contract work in the employment of the present contractor need by considered in computing the length of service for purposes of determining vacation eligibility.

(5) Whether or not the predessessor contract(s) was covered by a fringe benefit determination is immaterial in

determining whether the one year of service test has been met. This qualification refers to work performed before, as well as after, an applicable fringe benefit determination is incorporated into a contract. Also, the fact that the labor standards in predecessor service contract(s) were only those required under the Fair Labor Standards Act has no effect on the applicable fringe benefit determination contained in a current contract.

(b) Eligibility requirement—continuous service. Under the principles set forth above, if an employee's total length of service adds up to at least one year, the employee is eligible for one week's vacation with pay. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility. The term "continuous service" does not require the combination of two entirely separate periods of employment. Whether or not there is a break in the continuity of service so as to make an employee ineligible for a vacation benefit is dependent upon all the facts in the particular case. No fixed time period has been established for determining whether an employee has a break in service. Rather, as illustrated below, the reason(s) for an employee's absence from work is the primary factor in determining whether a break in service occurred.

(1) In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work on the contract because of reasons beyond their control, there would not be a break in service. Likewise, the absence from work for a few days, with or without notice, does not constitute a break in service, without a formal termination of employment. The following specific examples are illustrative situations where it has been determined that a break in service did not occur:

(i) An employee absent for five months due to illness but employed continuously for three years.

(ii) A strike after which employees returned to work.

(iii) An interim period of three months between contracts caused by delays in the procurement process during which time personnel hired directly by the Government performed the necessary services. However, the successor contractor in this case was not held liable for vacation benefits for those employees who had anniversary dates of employment during the interim period because no employment relationship existed during such period.

(iv) A mess hall closed three months for renovation. Contractor employees were considered to be on temporary layoff during the renovation period and did not have a break in service.

(2) Where an employee quits, is fired for cause, or his employment is otherwise terminated (except for temporary layoffs), there would be a break in service even if the employee were rehired at a later date. However, an employee may not be discharged and rehired as a subterfuge to evade the vacation requirement.

(c) Vesting and payment of vacation benefits.

(1) In the example given in (a)(1) of this section of a fringe benefit determination calling for "one week paid vacation after 1 year of service with a contractor or successor", an employee who renders the "one year of service" continuously becomes eligible for the "one week paid vacation" (i.e., 40 hours of paid vacation, unless otherwise specified in an applicable wage determination) upon his anniversary date of employment and upon each succeeding anniversary date thereafter. However, there is no accrual or vesting of vacation eligibility before the employee's anniversary date of employment, and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in a particular fringe benefit determination. For example, an employee who has worked 13 months for an employer subject to such stipulations and is separated without receiving any vacation benefit is entitled only to one full week's (40 hours) paid vacation. He would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless otherwise stated in the applicable wage determination. An employee who has not met the "one year of service" requirement would not be entitled to any portion of the "one week paid vacation".

(2) Eligibility for vacation specified in a particular wage determination is based on completion of the stated period of past service. The individual employee's anniversary date (and each annual anniversary date of employment thereafter) is the reference point for vesting of vacation eligibility, but does not necessarily mean that the employee must be given the vacation or paid for it on the date on which it is vested. The vacation may be scheduled according to a reasonable plan mutually agreed to and communicated to the employees. A "reasonable" plan may be interpreted to be a plan which allows the employer to maintain uninterrupted contract services but allows the employee some choice, by seniority or similar factor, in the scheduling of vacations. However, the required vacation must be given or payment made in lieu thereof before the next anniversary date, before completion of the current contract, or before the employee terminated employment, whichever occurs first.

(d) Contractor liability for vacation benefits.

(1) The liability for an employee's vacation is not prorated among contractors unless specifically provided for under a particular fringe benefit determination. The contractor by whom a person is employed at the time the vacation right vests, i.e., the employee's anniversary date of employment, must provide the full benefit required by the determination which is applicable on that date. For example, an employee, who had not previously performed similar contract work at the same facility, was first hired by a predecessor contractor on July 1, 1978. July 1 is the employee's anniversary date. The predecessor's contract ended June 30, 1979, but the employee continued working on the contract for the successor. Since the employee did not have an anniversary date of employment during the predecessor's contract, the predecessor would not have any vacation liability with respect to this employee. However, on July 1, 1979 the employee's entitlement to the full vacation benefit vested and the successor contractor would be liable for the full amount of the employee's vacation benefit.

(2) The requirements for furnishing data relative to employee hiring dates in situations where such employees worked for "predecessor" contractors are set forth in § 4.6. However, a contractor is not relieved from any obligation to provide vacation benefits because of difficulty in obtaining such data.

(e) Rate applicable to computation of vacation benefits.

(1) If an applicable wage determination requires that the hourly wage rate be increased during the period of the contract, the rate applicable to the computation of any required vacation benefits is the hourly rate in effect in the workweek in which the actual paid vacation is provided or the equivalent is paid, as the case may be, and would not be the average of the two hourly rates. This rule would not apply to situations where a wage determination specified the method of computation and the rate to be used.

(2) As set forth in § 4.172, unless specified otherwise in an applicable

fringe benefit determination, service employees must be furnished the required amount of fringe benefits for all hours paid for up to a maximum of 40 hours per week and 2,080 hours per year. Thus, an employee on paid vacation leave would accrue and must be compensated for any other applicable fringe benefits specified in the fringe benefit determination, and if any of the other benefits are furnished in the form of cash equivalents, such equivalents must be included with the applicable hourly wage rate in computing vacation benefits or a cash equivalent therefor. The rules and regulations for computing cash equivalents are set forth in § 4.177.

§ 4.174 Meeting requirements for holiday fringe benefits.

(a) Determining eligibility for holiday benefits—in general.

(1) Most fringe benefit determinations list a specific number of named holidays for which payment is required. Unless specified otherwise in an applicable determination, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the holiday benefit, regardless of whether the named holiday falls on a Sunday, another day during the workweek on which the employee is not normally scheduled to work, or on the employee's day off. In addition, holiday benefits cannot be denied because the employee has not been employed by the contractor for a designated period prior to the named holiday or because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the determination.

(2) An employee who performs no work during the workweek in which a named holiday occurs is generally not entitled to the holiday benefit. However, an employee who performs no work during the workweek because he is on paid vacation or sick leave in accordance with the terms of the applicable fringe benefit determination is entitled to holiday pay or another day off with pay to substitute for the named holiday. In addition, an employee who performs no work during the workweek because of a layoff does not forfeit his entitlement to holiday benefits if the layoff is merely a subterfuge by the contractor to avoid the payment of such benefits.

(3) The obligation to furnish holiday pay for the named holiday may be discharged if the contractor furnishes another day off with pay in accordance with a plan communicated to the employees involved. However, in such instances the holidays named in the fringe benefit determination are the reference points for determining whether an employee is eligible to receive holiday benefits. In other words, if an employee worked in a workweek in which a listed holiday occurred, the employee fully vests entitlement to pay for that holiday. Some determinations may provide for a specific number of holidays without naming them. In such instances the contractor is free to select the holidays to be taken in accordance with a plan communicated to the employees involved, and the agreed-upon holidays are the reference points for determining whether an employee is eligible to receive holiday benefits.

(b) Determining eligibility for holiday benefits—newly hired employees. The contractor generally is not required to compensate a newly hired employee for the holiday occurring prior to the hiring of the employee. However, if a named holiday falls in the first week of a contract, all employees who work during the first week would be entitled to holiday pay for that day. For example, if a contract to provide services for the period January 1 through December 31 contained a fringe benefit determination listing New Year's Day as a named holiday, and if New Year's Day were officially celebrated on January 2 in the year in question because January 1 fell on a Sunday, employees hired to begin work on January 3 would be entitled to holiday pay for New Year's Day.

(c) Payment of holiday benefits.

(1) A full-time employee who is eligible to receive payment for a named holiday must receive a full day's pay up to 8 hours unless a different standard is used in the fringe benefit determination, such as one reflecting collectively bargained holiday benefit requirements issued pursuant to Section 4(c) of the Act or a different historic practice in an industry or locality. Thus, for example, a contractor must furnish 7 hours of holiday pay to a full-time employee whose scheduled workday consists of 7 hours. An employee whose scheduled workday is 10 hours would be entitled to a holiday payment of 8 hours unless a different standard is used in the determination. As set forth in § 4.172, such holiday pay must include the full amount of fringe benefits to which the employee is entitled.

(2) Unless a different standard is used in the wage determination, a full-time employee who works on the day designated as a holiday must be paid, in addition to the amount he ordinarily would be entitled to for that day's work, the cash equivalent of a full-day's pay up to 8 hours or be furnished another day off with pay.

(3) If the fringe benefit determination lists the employee's birthday as a paid holiday and that day coincides with another listed holiday, the contractor may discharge his obligation to furnish payment for the second holiday by either substituting another day off with pay with the consent of the employee, furnishing holiday benefits of an extra day's pay, or if the employee works on the holiday in question, furnish holiday benefits of two extra days' pay.

(4) As stated in (a)(1) of this section, an employee's entitlement to holiday pay fully vests by working in the workweek in which the named holiday occurs. Accordingly, any employee who is terminated before receiving the full amount of holiday benefits due him must be paid the holiday benefits as a final cash payment.

(5) The rules and regulations for furnishing holiday pay to temporary and part-time employees are discussed in § 4.176.

(6) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of holiday pay are discussed in § 4.177.

§ 4.175 Meeting requirements for health, welfare, and/or pension benefits.

(a) Determining the required amount of benefits.

(1) Most fringe benefit determinations containing health and welfare and/or pension requirements specify a fixed payment per hour on behalf of each service employee. These payments are usually also stated as weekly or monthly amounts. As set forth in § 4.172, unless specified otherwise in the applicable determination such payments are due for all hours paid for, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year. The application of this rule can be illustrated by the following examples:

(i) An employee who works 4 days a week, 10 hours a day is entitled to 40 hours of health and welfare and/or pension fringe benefits. If an employee works 3 days a week, 12 hours a day, then such employee is entitled to 36 hours of these benefits.

(ii) An employee who works 32 hours in a workweek and also receives 8 hours of holiday pay is entitled to the maximum of 40 hours of health and welfare and/or pension payments in that workweek. If the employee works more than 32 hours and also received 8 hours of holiday pay, the employee is still only entitled to the maximum of 40 hours of health and welfare and/or pension payments.

(iii) If an employee is off work for two weeks on vacation and received 80

hours of vacation pay, the employee must also receive payment for the 80 hours of health and welfare and/or pension benefits which accrue during the vacation period.

(iv) An employee entitled to two weeks paid vacation who instead works the full 52 weeks in the year, receiving the full 2,080 hours worth of health and welfare and/or pension benefits, would be due an extra 80 hours of vacation pay in lieu of actually taking the vacation; however, such an employee would not be entitled to have an additional 80 hours of health and welfare and/or pension benefits included in his vacation pay.

(2) A fringe benefit determination calling for a specified benefit such as health insurance contemplates a fixed and definite contribution to a "bona fide" plan (as that term is defined in § 4.171) by an employer on behalf of each employee, based on the monetary cost to the employer rather than on the level of benefits provided. Therefore, in determining compliance with an applicable fringe benefit determination, the amount of the employer's contribution on behalf of each individual employee governs. Thus, as set forth in § 4.172, if a determination should require a contribution to a plan providing a specified fringe benefit and that benefit can be obtained for less than the required contribution, it would be necessary for the employer to make up the difference in cash to the employee, or by furnishing equivalent benefits, or a combination thereof. The following illustrates the application of this principle: A fringe benefit determination requires a rate of $36.40 per month employee for a health insurance plan. The employer obtains the health insurance coverage specified at a rate of $20.45 per month for a single employee, $30.60 for an employee with spouse, and $40.90 for an employee with a family. The employer is required to make up the difference in cash or equivalent benefits to the first two classes of employees in order to satisfy the determination, notwithstanding that coverage for an employee would be automatically changed by the employer if the employee's status should change (e.g., single to married) and notwithstanding that the employer's average contribution per employee may be equal to or in excess of $36.40 per month.

(b) Some fringe benefit determinations specifically provide for health and welfare and/or pension benefits in terms of average cost. Under this concept, a contractor's contributions per employee to a "bona fide" fringe benefit plan are permitted to vary depending upon the individual employee's marital or employment status. However, the firm's total contributions for all service employees enrolled in the plan must average at least the fringe benefit determination requirement per hour per service employee. If the contractor's contributions average less than the amount required by the determination, then the firm must make up the deficiency by making cash equivalent payments or equivalent fringe benefit payments to all service employees in the plan who worked on the contract during the payment period. Where such deficiencies are made up by means of cash equivalent payments, the payments must be made promptly on the following payday. The following illustrates the application of this principle: The determination requires an average contribution of $0.84 an hour. The contractor makes payments to bona fide fringe benefit plans on a monthly basis. During a month the firm contributes $15,000 for the service employees employed on the contract who are enrolled in the plan, and a total of 20,000 man-hours had been worked by all service employees during the month. Accordingly, the firm's average cost would have been $15,000 ÷ 20,000 hours or $0.75 per hour, resulting in a deficiency of $0.09 per hour. Therefore, the contractor owes the service employees in the plan who worked on the contract during the month an additional $0.09 an hour for each hour worked on the contract, payable on the next regular payday for wages. Unless otherwise provided in the applicable wage determination, contributions made by the employer for non-service employees may not be credited toward meeting Service Contract Act fringe benefit obligations.

(c) Employees excluded from participating in fringe benefit plans.

(1) Some health and welfare and pension plans contain eligibility exclusions for certain employees. For example, temporary and part-time employees may be excluded from participating in such plans. Also, employees receiving benefits through participation in plans of an employer other than the Government contractor or by a spouse's employer may be prevented from receiving benefits from the contractor's plan because of prohibitions against "double coverage". While such exclusions do not invalidate an otherwise bona fide insurance plan, employer contributions to such a plan cannot be considered to be made on behalf of the excluded employees. Accordingly, under fringe benefit determination requirements as described in the preceding subparagraph (a)(2), the employees excluded from participation in the health insurance plan must be furnished equivalent bona fide fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan.

(2) It is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from that plan at all times. For example, under some plans, newly hired employees who are eligible to participate in an insurance plan from their first day of employment may be prohibited from receiving benefits from the plan during a specified "waiting period". Contributions made on behalf of such employees would serve to discharge the contractor's obligation to furnish the fringe benefit. However, if no contributions are made for such employees, no credit may be taken toward the contractor's fringe benefit obligations.

(d) Payment of health and welfare and pension benefits.

(1) Health and welfare and/or pension payments to a "bona fide" insurance plan or trust program may be made on a periodic payment basis which is not less often than quarterly. However, where fringe benefit determinations contemplate a fixed contribution on behalf of each employee, and a contractor exercises his option to make hourly cash equivalent or differential payments, such payments must be made promptly on the regular payday for wages. (See § 4.165.)

(2) The rules and regulations for furnishing health and welfare and pension benefits to temporary and part-time employees are discussed in § 4.176.

(3) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of health and welfare and pension benefits are discussed in § 4.177.

§ 4.176 Payment of fringe benefits to temporary and part-time employees.

(a) As set forth in § 4.165(a)(2), the Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees. Accordingly, in the absence of express limitations, the provisions of an applicable fringe benefit determination apply to all temporary and part-time service employees engaged in covered work. However, in general, such temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time

spent in covered work. The application of these principles may be illustrated by the following examples:

(1) Assuming the paid vacation for full-time employees is one week, a part-time employee working a regularly scheduled workweek of 16 hours is entitled to 16 hours of paid vacation time or its equivalent each year, if all other qualifications are met.

(2) In the case of holidays, a part-time employee working a regularly scheduled workweek of 16 hours would be entitled to two-fifths of the holiday pay due full-time employees. It is immaterial whether or not the holiday falls on a normal workday of the part-time employee. Of course, a temporary or casual employee hired during a holiday week, but after the holiday, would be due no holiday benefits for that week.

(3) Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek in which the holiday occurs or, with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. For example:

(i) An employee works 10 hours during the week of July 4, a designated holiday. The employee is entitled to 10/40 of the holiday pay to which a full-time employee is entitled (i.e., 10/40 times 8=2 hours holiday pay).

(ii) A part-time employee works 520 hours during the 12 months preceding the employee's anniversary date. Since the typical number of nonovertime hours in a year of work is 2,080, if a full-time employee would be entitled to one week (40 hours) paid vacation under the applicable fringe benefit determination, then the part-time employee would be entitled to 520/2,080 times 40=10 hours paid vacation.

(4) A part-time employee working a regularly scheduled workweek of 20 hours would be entitled to one-half of the health and welfare and/or pension benefits specified in the applicable fringe benefit determination. Thus, if the determination requires $36.40 per month for health insurance, the contractor could discharge his obligation towards the employee in question by providing a health insurance policy costing $18.20 per month.

(b) A contractor's obligation to furnish the specified fringe benefits to temporary and part-time employees may be discharged by furnishing equivalent benefits, cash equivalents, or a combination thereof in accordance with the rules and regulations set forth in § 4.177.

§ 4.177 Discharging fringe benefit obligations by equivalent means.

(a) In general.

(1) Section 2(a)(2) of the Act, which provides for fringe benefits that are separate from and in addition to the monetary compensation required under section 2(a)(1), permits an employer to discharge his obligation to furnish the fringe benefits specified in an applicable fringe benefit determination by furnishing any equivalent combinations of "bona fide" fringe benefits or by making equivalent or differential payments in cash. However, credit for such payments is limited to the employer's fringe benefit obligations under section 2(a)(2), since the Act does not authorize any part of the monetary wage required by section 2(a)(1) and specified in the wage determination and the contract, to be offset by the fringe benefit payments or equivalents which are furnished or paid pursuant to section 2(a)(2).

(2) When a contractor substitutes fringe benefits not specified in the fringe benefit determination contained in the contract for fringe benefits which are so specified, the substituted fringe benefits, like those for which the contract provisions are prescribed, must be "bona fide" fringe benefits, as that term is defined in § 4.172(a).

(3) When a contractor discharges his fringe benefit obligation by furnishing, in lieu of those benefits specified in the applicable fringe benefit determination, other "bona fide" fringe benefits, cash payments, or a combination thereof, the substituted fringe benefits and/or cash payments must be "equivalent" to the benefits specified in the determination. As used in this subpart, the terms "equivalent fringe benefit" and "cash equivalent" mean equal in terms of monetary cost to the contractor. Thus, as set forth in § 4.172, if an applicable fringe benefit determination calls for a particular fringe benefit in a stated amount and the contractor furnished this benefit through contributions in a lesser amount, the contractor must furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefit which the contractor provides. This principle may be illustrated by the example given in § 4.175(a)(2).

(b) Furnishing equivalent fringe benefits.

(1) A contractor's obligation to furnish fringe benefits which are stated in a specified cash amount may be discharged by furnishing any combination of "bona fide" fringe benefits costing an equal amount. Thus, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if, instead, hospitalization benefits costing not less than 20 cents per hour are provided. The same obligation will be met if hospitalization benefits costing 10 cents an hour and life insurance benefits costing 10 cents an hour are provided. As set forth in § 4.171(c), no benefit required to be furnished the employee by any other law, such as workers' compensation, may be credited toward satisfying the fringe benefit requirements of the Act.

(2) A contracator who wishes to furnish equivalent fringe benefits in lieu of those benefits which are not stated in a specified cash amount, such as "one week paid vacation", must first determine the equivalent cash value of such benefits in accordance with the rules set forth in paragraph (c) of this section.

(c) Furnishing cash equivalents.

(1) Fringe benefit obligations may be discharged by paying to the employee on his regular payday, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits, provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an appalicable determination is $4.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 20 cents an hour and retirement benefits costing 20 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe benefits, the employer pays the employee, in cash, 40 cents per hour as the cash equivalent of the fringe benefits in addition to the $4.50 per hour wage rate required under the applicable wage determination.

(2) The hourly cash equivalent of those fringe benefits which are not stated in the applicable determination in terms of hourly cash amounts may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former must be used for this computation, and if the fringe benefit determination does not specify any daily or weekly hours of work by which benefits are to be measured, a

standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical situations is illustrated in paragraphs (c)(3) through (7) of this section.

(3) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employees' regular or basic (i.e., wage determination) rate of pay, whichever is greater. For example, if the determination calls for a 5 percent pension fund payment and the employee is paid a monetary rate of $4.50 an hour, or if the employee earns $4.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 22½ cents an hour.

(4) If the determination lists a particular fringe benefit in such terms as $8 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—$8 a week", and does not specify weekly hours, the hourly cash equivalent is 20 cents per hour, i.e., $8 divided by 40, the standard number of non-overtime working hours in a week.

(5) In determining the hourly cash equivalent of those fringe benefits which are not stated in the determination in terms of a cash amount, but are stated, for example, as "nine paid holidays per year" or "1 week paid vacation after one year of service", the employee's hourly monetary rate of pay is multiplied by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour and 40-hour week is considered applicable. The total annual cost so determined is divided by 2,080, the standard number of non-overtime hours in a year of work, to arrive at the hourly cash equivalent. This principle may be illustrated by following examples:

(i) If a particular determination lists as a fringe benefit "nine holidays per year" and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 72 (9 days of 8 hours each) and the result, $324, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.1557 an hour. See § 4.174(c)(4).

(ii) If the determination requires "one week paid vacation after one year of service", and the employee's hourly rate of pay is $4.50, the $4.50 is multiplied by 40 and the result, $180.00, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.0865 an hour.

(6) Where an employer elects to pay an hourly cash equivalent in lieu of a paid vacation, which is computed in accordance with paragraph (c)(5) of this section, such payments need commence only after the employee has satisfied the "after one year of service" requirement. However, should the employee terminate his employment for any reason before he has received the full amount of vested vacation benefits due him, the employee must be paid the full amount of any difference remaining as the final cash payment. For example, any employee becomes eligible for a week's vacation pay on March 1. The employer elects to pay this employee an hourly cash equivalent beginning that date; the employee terminates employment on March 31. Accordingly, as this employee has received only 1/12 of the vacation pay to which he/she is entitled, the employee is due the remaining 11/12 upon termination. As set forth in § 4.173(e), the rate applicable to the computation of cash equivalents for vacation benefits is the hourly wage rate in effect at the time such equivalent payments are actually made.

(d) *Furnishing a combination of equivalent fringe benefits and cash payments.* Fringe benefit obligations may be discharged by furnishing any combination of cash or fringe benefits as illustrated in the preceding paragraphs of this section, in monetary amounts the total of which is equivalent, under the rules therein stated, to the determined fringe benefits specified in the contract. For example, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if instead, hospitalization benefits costing 15 cents an hour and a cash equivalent payment of 5 cents an hour are provided.

(e) *Effect of equivalents in computing overtime pay.* Section 6 of the Act excludes from the regular or basic hourly rate of an employee, for purposes of determining the overtime pay to which the employee is entitled under any other Federal law, those fringe benefit payments computed under the Act which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) (formerly designated as section 7(d)) of that Act (29 U.S.C. 207(e)). Fringe benefit payments which qualify for such exclusion are described in Subpart C of Regulations, 29 CFR Part 778. When such fringe benefits are required to be furnished to service employees engaged in contract performance, the right to compute overtime pay in accordance with the above rule is not lost to a contractor or subcontractor because it discharges its obligation under this Act to furnish such fringe benefits through alternative equivalents as provided in this section. If it furnishes equivalent benefits or makes cash payments, or both, to such an employee as authorized herein, the amounts thereof, which discharge the employer's obligation to furnish such specified fringe benefits, may be excluded pursuant to this Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under any other Federal law. No such exclusion can operate, however, to reduce an employee's regular or basic rate of pay below the monetary wage rate specified as the applicable minimum wage rates under sections 2(a)(1), 2(b), or 4(c) of this Act or under other law or an employment contract.

§ 4.178 Computation of hours worked.

Since employees subject to the Act are entitled to the minimum compensation specified under its provisions for each hour worked in performance of a covered contract, a computation of their hours worked in each workweek when such work under the contract is performed is essential. Determinationsof hours worked will be made in accordance with the principles applied under the Fair Labor Standards Act as set forth in Part 785 of this title. In general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work whether or not required to do so, and all time during which the employee is required to be on duty to to be on the employer's premises or to be at a prescribed workplace. The hours worked which are subject to the compensation provisions of the Act are those in which the employee is engaged in performing work on contracts subject to the Act; however, unless such hours are adequately segregated, as indicated in § 4.179, compensation in accordance with the Act will be required for all hours of work in any workweek in which the employee performs, any work in connection with the contract, in the absence of affirmative proof to the contrary that such work did not continue throughout the workweek.

§ 4.179 Identification of contract work.

Contractors and subcontractors under contracts subject to the Act are required to comply with its compensation requirements throughout the period of performance on the contract and to do so with respect to all employees who in any workweek are engaged in performing work on such contracts. If such a contractor during any workweek is not exclusively engaged in performing such contracts, or if while so engaged it

has employees who spend a portion but not all of their worktime in the workweek in performing work on such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts. In cases where contractors are not exclusively engaged in Government contract work, and there are adequate records segregating the periods in which work was performed on contracts subject to the Act from periods in which other work was performed, the compensation specified under the Act need not be paid for hours spent on non-contract work. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. Even where a contractor can segregate Government from non-Government work, it is necessary that the contractor comply with the requirements of section 6(e) of the FLSA discussed in § 4.160.

Overtime Pay of Covered Employees

§ 4.180 Overtime pay—in general.

The Act does not provide for compensation of covered employees at premium rates for overtime hours of work. Section 6 recognizes however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the Act (see § 4.181) and prescribes, for purposes of such laws, the manner in which fringe benefits furnished pursuant to the Act shall be treated in computing such overtime compensation as follows: "In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) [now section 7(e)] thereof." Fringe benefit payments which qualify for such exclusion are described in Part 778, Subpart C of this title. The interpretations there set forth will be applied in determining the overtime pay to which covered service employees are entitled under other Federal statutes. The effect of section 6 of the Act in situations where equivalent fringe benefits or each payments are provided in lieu of the specified fringe benefits is stated in § 4.177(e) of this part, and illustrated in § 4.182.

§ 4.181 Overtime pay provisions of other Acts.

(a) *Fair Labor Standards Act.* Although provision has not been made for insertion in Government contracts of stipulations requiring compliance with the overtime provisions of the Fair Labor Standards Act, contractors and subcontractors performing contracts subject to the McNamara-O'Hara Service Contract Act may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the Fair Labor Standards Act. This is true with respect to employees engaged in interstate or foreign commerce or in the production of goods for such commerce (including occupations and processes closely related and directly essential to such production) and employees employed in enterprises which are so engaged, subject to the definitions and exceptions provided in such Act. Such employees, except as otherwise specifically provided in such Act, must receive overtime compensation at a rate of not less than 1½ times their regular rate of pay for all hours worked in excess of the applicable standard in a workweek. See Part 778 of this title. However, the Fair Labor Standards Act provides no overtime pay requirements for employees, not within such interstate commerce coverage of the Act, who are subject to its minimum wage provisions only by virtue of the provisions of section 6(e), as explained in § 4.160.

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332) applies generally to Government contracts, including service contracts in excess of $2,500, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer or mechanic for his performance of work on such contracts must include compensation at a rate not less than 1½ times his basic rate of pay for all hours worked in any workweek in excess of 40 or in excess of eight on any calendar days therein, whichever is the greater number of overtime hours. Exemptions are provided for transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work required to be done in accordance with the provisions of the Walsh-Healey Act.

(2) Regulations concerning this Act are contained in Subparts A and C of 29 CFR 5 which permit overtime pay to be computed in the same manner as under the Fair Labor Standards Act, subject of course to the differences in computations required by reason of the daily overtime provision of the Contract Work Hours and Safety Standards Act, which has no counterpart in the Fair Labor Standards Act.

(3) Although the application of the Contract Work Hours and Safety Standards Act does not depend on inclusion of its requirements in provisions physically made part of the contract, the regulations of the Secretary require such provisions to be set forth in contract clauses. (See § 5.5(c) of this subtitle.)

(c) *Walsh-Healey Public Contracts Act.* As pointed out in § 4.117, while some Government contracts may be subject both to the McNamara-O'Hara Service Contract Act and to the Walsh-Healey Public Contracts Act, the employees performing work on the contract which is subject to the latter Act are, when so engaged, exempt from the provisions of the former. They are, however, subject to the overtime provisions of the Walsh-Healey Act if, in any workweek, any of the work performed for the employer is subject to such Act and if, in such workweek, the total hours worked by the employee for the employer (whether wholly or only partly on such work) exceed 40 hours in the workweek or 8 hours in any day therein. In any such workweek the Walsh-Healey Act requires payment of overtime compensation at a rate not less than 1½ times the employee's basic rate for such weekly or daily overtime hours, whichever are greater in number. The overtime pay provisions of the Walsh-Healey Act are discussed in greater detail in 41 CFR 50–201.

§ 4.182 Overtime pay of service employees entitled to fringe benefits.

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act which permit exclusion of certain fringe

benefits and equivalents provided pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.177, not only those fringe benefits excludable under section 6 as benefits determined as specified under section 2(a)(2), but also equivalent fringe benefits and cash payments furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee $4.50 an hour in cash under a wage determination which requires a monetary rate of not less than $4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of $4 an hour.

(b) The B company has some time been paying $4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of $4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because they are found to be prevailing for such employees in the locality. The contractor may credit the 25 cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract but must also make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash. These contributions or equivalent payments may be excluded from the employee's regular rate which remains $4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying $4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least $4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. The fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in § 4.177. The company may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due.

Notice to Employees

§ 4.183 Employees must be notified of compensation required.

The Act, in section 2(a)(4), and the regulations thereunder in § 4.6(e), require all contracts subject to the Act which are in excess of $2,500 to contain a clause requiring the contractor or subcontractor to notify each employee commencing work on a contract to which the Act applies of the compensation required to be paid such employee under section 2(a)(1) and the fringe benefits required to be furnished under section 2(a)(2). A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in § 4.184.

§ 4.184 Posting of notice.

Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place the worksite, as required by § 4.6(e). The display of the notice in a place where it may be seen by employees performing on the contract will satisfy the requirement that it be in a "prominent and accessible place". Should display be necessary at more than one site, in order to assure that it is seen by such employees, additional copies of the poster may be obtained without cost for the Division. The contractor or subcontractor is required to notify each employee of the compensation due or attach to the poster any applicable wage determination specified in the contract listing all minimum monetary wages and fringe benefits, to be paid or furnished to the classes of service employees performing on the contract.

Records

§ 4.185 Recordkeeping requirements.

The records which a contractor or subcontractor is required to keep concerning employment of employees subject to the Act are specified in § 4.6(g) of Subpart A of this part. They are required to be maintained for 3 years from the completion of the work, and must be made available for inspection and transcription by authorized representatives of the Administrator. Such records must be kept for each service employee performing work under the contract, for each workweek during the performance of the contract. If the required records are not separately kept for the service employees performing on the contract, it will be presumed, in the absence of affirmative proof to the contrary, that all service employees in the department or establishment where the contract was performed were engaged in covered work during the period of performance. (See § 4.179.)

§ 4.186 [Reserved]

Subpart E—Enforcement

§ 4.187 Recovery of underpayments.

(a) The Act, in section 3(a) provides that any violations of any of the contract stipulations required by sections 2(a)(1), 2(a)(2), or 2(b) of the Act, shall render the party responsible liable for the amount of any deductions, rebates, refunds, or underpayments (which includes non-payment) of compensation due to any employee engaged in the performance of the contract. So much of the accrued payments due either on the contract or on any other contract (whether subject to the Service Contract Act or not) between the same contractor and the Government may be withheld in a deposit fund as is necessary to pay the employees. In the case of requirements-type contracts, it is the contracting agency, and not the using agencies, which has the responsibility for complying with a withholding request by the Secretary or authorized representative. The Act further provides that on order of the Secretary (or authorized representatives), any compensation which the head of the Federal agency or the Secretary has found to be due shall be paid directly to the underpaid employees from any accrued payments withheld. In order to effectuate the efficient administration of this provision of the Act, such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary, the authorized representatives, Administrative Law Judge, or Board of Service Contract Appeals, and are not paid directly to such employees by the contracting agency without the express prior consent of the Administrator. (See Decision of the Comptroller General, B-170784, February 12, 1971.) It is mandatory for a contracting officer to adhere to a request from the Department of Labor to withhold funds where such funds are available. (Decision of the Comptroller General, B-109257, October 14, 1952, arising under the Walsh-Healey Act.) Contract funds which are or may become due a contractor under any contract with the United States may be withheld prior to the institution of administrative proceedings by the

Secretary. (*McCaslan* v. *U.S. Postal Service,* 82 CCH Labor Cases ¶ 33,607 (N.D. N.Y. 1977.))

(b) *Priority to withheld funds.*

The Comptroller General has afforded employee wage claims priority over an Internal Revenue Service levy for unpaid taxes. (See also Decisions of the Comptroller General, B–170784, February 17, 1971; B–189137, August 1, 1977; 546 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976), arising under the Davis-Bacon Act; B–178198, August 30, 1973; B–161460, May 25, 1967.)

(1) As the Comptroller General has stated, "[t]he legislative histories of these labor statutes [Service Contract Act and Contract Work Hours and Safety Standards Act, 41 U.S.C. 327, *et seq.*] disclose a progressive tendency to extend a more liberal interpretation and construction in successive enactments with regard to worker's benefits, recovery and repayment of wage underpayments. Further, as remedial legislation, it is axiomatic that they are to be liberally construed". (Decision of the Comptroller General, B–170784, February 17, 1971.)

(2) Since section 3(a) of the Act provides that accrued contract funds withheld to pay employees wages must be held in a deposit fund, it is the position of the Department of Labor that monies so held may not be used or set aside for agency reprocurement costs. To hold otherwise would be inequitable and contrary to public policy, since the employees have performed work from which the Government has received the benefit (see *National Surety Corporation* v. *U.S.,* 132 Ct. Cl. 724, 728, 135 F. Supp 381 (1955), cert. denied, 350 U.S. 902.), and that to give contracting agency reprocurement claims priority would be to require employees to pay for the breach of contract between the employer and the agency. The Comptroller General has sanctioned priority being afforded wage underpayments over the reprocurement costs of the contracting agency following a contractor's default or termination for cause. Decision of the Comptroller General, B–167000, June 26, 1969; B–178198, August 30, 1973; and B–189137, August 1, 1977.

(3) Wage claims have priority over reprocurement costs and tax liens without regard to when the competing claims were raised. Decisions of the Comptroller General, B–161460, May 25, 1967; B–189137, August 1, 1977.

(4) Wages due underpaid workers have priority over any assignee of the contractor, including assignments made under the Assignment of Claims Act, 311 U.S.C. 203, 41 U.S.C. 115, to funds withheld, since an assignee can acquire no greater rights to withheld funds to the extent employees were underpaid than the assignor has in the absence of an assignment. See *Modern Industrial Bank* v. *U.S.,* 101, Ct. Cl. 808 (1944); *Royal Indemnity Co.* v. *United States,* 178 Ct. Cl. 46, 371 F. 2d 462 (1967), cert. denied, 389 U.S. 833; *Newark Insurance Co.* v. *U.S.* 149 Ct. Cl. 170, 181 F. Supp. 246 (1960); *Henningsen* v. *United States Fidelity and Guaranty Company,* 208 U.S. 404 (1908). Where employees have been underpaid, the assignor has no right to assign funds since the assignor has no property rights to amounts withheld from the contract to cover underpayments of workers which constitutes a violation of the law and the terms, conditions, and obligations under the Contract. (Decision of the Comptroller General, B–164881, August 14, 1968; B–178198, August 30, 1973; 56 Comp. Gen. 499 (1977); 55 Comp Gen. 744 (1976); *The National City Bank of Evansville* v. *United States* 143 Ct. Cl. 154, 163 F. Supp. 846 1958); *National Surety Corporation* v. *United States,* 132 Ct. Cl. 724, 135 F. Supp. 381 (1955), cert. denied, 350 U.S. 902.)

(5) The Comptroller General, recognizing that unpaid laborers have an equitable right to be paid from contract retainages, has also held that wage underpayments under the Act have priority over any claim by the trustee in bankruptcy. 56 Comp. Gen. 499 (1977), citing *Pearlman* v. *Reliance Insurance Company,* 371 U.S. 132 (1962); *Hadden* v. *United States,* 132 Ct. Cl. 529 (1955) in which the courts gave priority to sureties who had paid unpaid laborers over the trustee in bankruptcy. The same result was reached by the United States District Court for the District of Utah in *Matter of Sargent Security System, Inc., Bankruptcy No. B–930–71 (April 27, 1972) (not reported), holding that it has no jurisdiction to grant the trustee's petition that funds found to be due for unpaid wages and duly withheld from the bankrupt be turned over to the trustee rather than distributed to the underpaid workers. See also Matter of Raul Salas Catala et. al, Bankruptcy No. B–78–238/39 (D.C. P.R. 1978, not reported).*

(c) Section 5(b) of the Act provides that if the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to the Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. The Service Contract Act is not subject to the statute of limitations in the Portal to Portal Act, 29 U.S.C. 255, and contains no prescribed period within which such an action must be instituted; it has therefore been held that the general period of six years prescribed by 28 U.S.C. 2415 applies to such actions *United States of America* v. *Deluxe Cleaners and Laundry, Inc.,* 511 F. 2d 929 (C.A. 4, 1975). Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on the order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury of the United States as miscellaneous receipts.

(d) Release or waivers executed by employees for unpaid wages and fringe benefits due them are without legal effect. As stated by the Supreme Court in *Brooklyn Savings Bank* v. *O'Neil,* 324 U.S. 697, 704, (1945), arising under the Fair Labor Standards Act:

"Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate."

See also *Schulte, Inc.* v. *Gangi,* 328 U.S. 108 (1946); *United States* v. *Morley Construction Company,* 98 F. 2d. 781 (C.A. 2, 1938), cert. denied, 305 U.S. 651.

Further, as noted above, monies not paid to employees to whom they are due because of violation are covered into the U.S. Treasury as provided by section 5(b) of the Act.

(e)(i) The term "party responsible" for violations in section 3(a) of the Act is the same term as contained in the Walsh-Healey Public Contracts Act, and therefore, the same principles are applied under both Acts. An officer of a corporation who actively directs and supervises the contract performance, including employment policies and practices and the work of the employees working on the contract, is a party responsible and liable for the violations, individually and jointly with the company (*S & G Coal Sales, Inc.,* Decision of the Hearing Examiner, PC–946, January 21, 1965, affirmed by the Administrator June 8, 1965; *Tennessee Processing Co., Inc.,* Decision of the Hearing Examiner, PC–790, September 28, 1965).

(2) The failure to perform a statutory public duty under the Service Contract Act is not only a corporate liability but also personal liability of each and every officer charged by reason of his or her corporate office while performing that

duty. *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp 404, 408 (E.D. N.Y. 1972). Accordingly, it has been held by administrative decisions and by the courts that the term "party responsible", as used in section 3(a) of the Act, imposes personal liability for violations of any of the contract stipulations required by sections 2(a)(1) of (2) of 2(b) of the Act on corporate officers who control, or are responsible for control of, the corporate entity, as they, individually, have an obligation to assure compliance with the requirements of the Act, the regulations, and the contracts. See, for example, *Waite, Inc.*, Decision of the ALJ, SCA 530–566, October 19, 1976, *Spruce-Up Corp.*, Decision of the Administrator SCA 366–370, August, 19, 1976, *Ventilation and Cleaning Engineers, Inc.*, Decision of the ALJ, SCA 176, August 23, 1973, Assistant Secretary, May 17, 1974, Secretary, September 27, 1974; *Fred Van Elk*, Decision of the ALJ, SCA 254–58, May 28, 1974, Administrator, November 25, 1974; *Murcole, Inc.*, Decision of the ALJ, SCA 195–198, April 11, 1974; *Emile J. Bouchet*, Decision of the ALJ, SCA 38, February 24, 1970; *Darwyn L. Grover*, Decision of the ALJ, SCA 485, August 15, 1976; *United States* v. *Islip Machine Works, Inc.*, 179 F. Supp, 585 (E.D. N.Y. 1959); *United States* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972).

(3) In essence, individual liability attaches to the corporate official who is responsible for, and therefore, causes or permits, the violation of the contract stipulations required by the act, i.e., corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.

(4) It has also been held that the personal responsbility and liability of individuals for violations of the Act is not limited to the officers of a contracting firm or to signatories to the Government contract who are bound by and accept responsibility for compliance with the Act and imposition of its sanctions set forth in the contract clauses in § 4.6, but includes all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract including the labor policy or employment conditions regarding the employees engaged in contract performance, and who, by action or inaction, cause or permit a contract to be breached. *U.S.* v. *Islip Machine Works, Inc.*, 179 F. Supp 585 (E.D. N.Y. 1959); *U.S.* v. *Sancolmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972); *Oscar Hestrom Corp.*, Decision of the Administrator, PC–257, May 7, 1946, affirmed, *U.S.* v. *Hedstrom*, 8 Wage Hour Cases 302 (N.D. Ill. 1948); *Craddock-Terry Shoe Corp.*, Decision of the Administrator, PC–330, October 3, 1947; *Reynolds Research Corp.*, Decision of the Administrator, PC–381, October 24, 1951; *Etowah Garnet Co., Inc.*, Decision of the Hearing Examiner, PC–632, August 9, 1957, Decision of the Administrator, April 29, 1958; *Cardinal Fuel and Supply Co.*, Decision of the Hearing Examiner, PC–890, June 17, 1963.

(5) Reliance on advice from contracting agency officials (or Department of Labor officials without the authority to issue rulings under the Act) is not a defense against a contractor's liability for back wages under the Act. *Standard Fabrication Ltd.*, Decision of the Secretary, PC–297, August 3, 1948; *Airport Machining Corp.*, Decision of the ALJ, PC–1177, June 15, 1973; *James D. West*, Decision of the ALJ, SCA 397–398, November 17, 1975; *Metropolitan Rehabilitation Corp.*, WAB Case No. 78–25, August 2, 1979; *Fry Brothers Corp.*, WAB Case No. 76–6, June 14, 1977.

(f) The appellate rights of a contractor or subcontractor regarding violations of the Act, including back wage liability or the disposition of funds withheld by the agency for such liability are contained in Parts 6 and 8 of this Title. Appeals in such matters have not been delegated to the contracting agencies and such matters cannot be appealed under the disputes clause in the contractor's contract.

(g) While the Act provides that action may be brought against a surety to recover underpayments of compensation, there is no statutory provisions requiring that contractors furnish either payment or performance bonds before an award can be made. The courts have held, however, that when such a bond has been given, even one denominated as a performance rather than payment bond, and such a bond guarantees that the principal shall fulfill "all the undertakings, convenants, terms, conditions, and agreements" of the contract, or similar words to the same effect, the surety-guarantor is jointly liable for underpayments by the contractor of the wages and fringe benefits required by the Act up to the amount of the bond. *U.S.* v. *Powers Building Maintenance Co.*, 366 F. Supp. 819 (W.D. Okla. 1972); *U.S.* v. *Gillespie*, 72 CCH Labor Cases ¶ 33,986 (C.D. Cal. 1973) *U.S.* v. Glens Falls Insurance Co., 279 F. Supp. 236, (E.D. Tenn. 1967); *United States* v. *Hudgins-Dize Co.*, 83 F. Supp. 593 (E.D. Va. 1949); *U.S.* v. *Continental Casualty Company*, 85 F. Supp. 573 (E.D. Pa. 1949), affirmed per Curiam, 182 F.2d 941 (C.S. 3, 1950).

§ 4.188 Ineligibility for further contracts when violations occur.

(a) Section 5 of the Act directs the Comptroller General to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found violated this Act. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States or the District of Columbia (whether or not subject to the Act) shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons of firms have a substantial interest until 3 years have elapsed from the date of publication of the list containing the names of such persons of firms. This prohibition against the award of a contract to an ineligible contractor applies to the contractor in its capacity as either a prime contractor or a subcontractor. Because the Act contains no provision authorizing removal from the list of the names of such persons or firms prior to the expiration of the three-year statutory period, the Secretary is without authority to accomplish such removal (other than in situations involving mistake or legal error). On the other hand, there may be situations in which persons or firms already on the list are found in a subsequent administrative proceeding to have again violated the Act and their debarment ordered. In such circumstances, a new, three-year debarment term will commence with the republication of such names on the list, to run concurrently with the previous debarment period.

(b)(1) The term "unusual circumstances" is not defined in the Act. Accordingly, the determination must be made on a case-by-case basis in accordance with the particular facts present. It is clear, however, that the effect of the 1972 Amendments is to limit the Secretary's discretion to relieve violators from the debarred list (H. Rept. 92–1251, 92d Cong., 2d Sess. 5; S. Rept. 92–1131, 92d Cong., 2d Sess. 3–4) and that the violator of the Act has the burden of establishing the existence of unusual circumstances to warrant relief from the debarment sanction, *Ventilation and Cleaning Engineers, Inc.*, SCA–176, Administrative Law Judge, August 23, 1973, Assistant Secretary, May 22, 1974, Secretary, October 2, 1974. It is also clear that unusual circumstances do not include

any circumstances which would have been insufficient to relieve a contractor from the ineligible list prior to the 1972 amendments, or those circumstances which commonly exist in cases where violations are found, such as, negligent or willful disregard of the contract requirements and of the Act and regulations, including a contractor's plea of ignorance of the Act's requirements where the obligation to comply with the Act is plain from the contract, failure to keep necessary records and the like. *Emerald Maintenance Inc.*, Supplemental Decision of the ALJ, SCA–153, April 5, 1973.

(2) The Subcommittee report following the oversight hearings conducted just prior to the 1972 amendments makes it plain that the limitation of the Secretary's discretion through the unusual circumstances language was designed in part to prevent the Secretary from relieving a contractor from the ineligible list provisions merely because the contractor paid what he was required by his contract to pay in the first place and promised to comply with the Act in the future. See, House Committee on Education and Labor, Special Subcommittee on Labor, The Plight of Service Workers under Government Contracts 12–13 (Comm. Print 1971). As Congressman O'Hara stated: "Restoration * * * [of wages and benefits] is not in and of itself a penalty. The penalty for violation is the suspension from the right to bid on Government contracts * * *. The authority [to relieve from blacklisting] was intended to be used in situations where the violation was a minor one, or an inadvertent one, or one on which disbarment * * * would have been wholly disproportionate to the offense." House Committee on Education and Labor, Special Subcommittee on Labor, Hearings on H.R. 6244 and H.R. 6245, 92d Cong., 1st Sess. 3 (1971).

(3) The Department of Labor has developed criteria for determining when there are unusual circumstances within the meaning of the Act. See, e.g., *Washington Moving & Storage Co.*, Decision of the Assistant Secretary, SCA 68, August 16, 1973, Secretary, March 12, 1974; *Quality Maintenance Co.*, Decision of the Assistant Secretary, SCA 119, January 11, 1974. Thus, where the respondent's conduct in causing or permitting violations of the Service Contract Act provisions of the contract is willful, deliberate or of an aggravated nature or where the violations are a result of culpable conduct such as culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records), relief from the debarment sanction cannot be in order. Furthermore, relief from debarment cannot be in order where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature. A good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance are generally prerequisites to relief. Where these prerequisites are present and none of the aggravated circumstances in the preceding paragraph exist, a variety of factors must still be considered, including whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.

(4) A contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot resolve questions which arise itself, but rather must seek advice from the Department of Labor. *Murcole, Inc.*, Decision of the ALJ, SCA 195–198, April 10, 1974; *McLaughlin Storage, Inc.*, Decision of the ALJ, SCA 362–365, November 5, 1975, Administrator, March 25, 1976; *Able Building & Maintenance & Service Co.*, Decision of the ALJ, SCA 389–390, May 29, 1975, Assistant Secretary, January 13, 1976; *Aarid Van Lines, Inc.*, Decision of the Administrator, SCA 423–425, May 13, 1977.

(5) Furthermore, a contractor cannot be relieved from debarment by attempting to shift his/her responsibility to subordinate employees. *Security Systems, Inc.*, Decision of the ALJ, SCA 774–775, April 10, 1978; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974; *Ernest Roman*, Decision of the Secretary, SCA 275, May 6, 1977. As the Comptroller General has stated in considering debarment under the Davis-Bacon Act, "[n]egligence of the employer to instruct his employees as to the proper method of performing his work or to see that the employee obeys his instructions renders the employer liable for injuries to third parties resulting therefrom. * * * The employer will be liable for acts of his employee within the scope of the employment regardless of whether the acts were expressly or impliedly authorized. * * * Willful and malicious acts of the employee are imputable to the employer under the doctrine of respondent superior although they might not have been consented to or expressly authorized or ratified by the employer." (Decision of the Comptroller General, B–145606, August 1, 1961.)

(6) Nor does negligence *per se* constitute unusual circumstances. Relief on no basis other than negligence would render the effect of section 5(a) a nullity, since it was intended that only responsible bidders be awarded Government contracts. *Greenwood's Transfer & Storage, Inc.*, Decision of the Secretary, SCA 321–326, June 1, 1976; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974.

(c) Similarly, the term "substantial interest" is not defined in the Act. Accordingly, this determination, too, must be made on a case-by-case basis in light of the particular facts, and cognizant of the legislative intent "to provide to service employees safeguards similar to those given to employees covered by the Walsh-Healey Public Contracts Act". *Federal Food Services, Inc.*, Decision of the ALJ, SCA 585–592, November 22, 1977. Thus, guidance can be obtained from cases arising under the Walsh-Healey Act, which uses the concept "controlling interest". See *Regal Mfg. Co.*, Decision of the Administrator, PC–245, March 1, 1946; *Acme Sportswear Co.*, Decision of the Hearing Examiner, PC–275, May 8, 1946; *Gearcraft, Inc.*, Decision of the ALJ, PCX–1 May 3, 1972. In a supplemental decision of February 23, 1979, in *Federal Food Services, Inc.* the Judge ruled as a matter of law that the term "does not preclude every employment or financial relationship between a party under sanction and another * * * [and that] it is necessary to look behind titles, payments, and arrangements and examine the existing circumstances before reaching a conclusion in this matter."

(1) Where a person or firm has a direct or beneficial ownership or control of more than 5 percent of any firm, corporation, partnership, or association, a "substantial interest" will be deemed to exist. Similarly, where a person is an officer or director in a firm or the debarred firm shares common management with another firm, a

"substantial interest" will be deemed to exist. Furthermore, wherever a firm is an affiliate as defined in § 4.1a(g) of Subpart A, a "substantial interest" will be deemed to exist, or where a debarred person forms or participates in another firm in which he/she has comparable authority, he/she will be deemed to have a "substantial interest" in the new firm and such new firm would also be debarred (*Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC–632, August 9, 1957).

(2) Nor is interest determined by ownership alone. A debarred person will also be deemed to have a "substantial interest" in a firm if such person has participated in contract negotiations, is a signatory to a contract, or has the authority to establish, control, or manage the contract performance and/or the labor policies of a firm. A "substantial interest" may also be deemed to exist, in other circumstances, after consideration of the facts of the individual case. Factors to be examined include, among others, sharing of common premises or facilities, occupying any position such as manager, supervisor, or consultant to, any such entity, whether compensated on a salary, bonus, fee, dividend, profit-sharing, or other basis of remuneration, including indirect compensation by virtue of family relationships or otherwise. A firm will be particularly closely examined where there has been an attempt to sever an association with a debarred firm or where the firm was formed by a person previously affiliated with the debarred firm or a relative of the debarred person.

(3) Firms with such identity of interest with a debarred person or firm will be placed on the debarred bidders list after the determination is made pursuant to procedures in Part 6, Subpart A, or § 4.12 and Part 6, Subpart D. Where a determination of such "substantial interest" is made after the initiation of the debarment period, contracting agencies are to terminate any contract with such firm entered into after the initiation of the original debarment period since all persons in which the debarred person or firm has a substantial interest are also ineligible to receive Government contracts.

§ 4.189 Administrative proceedings relating to enforcement of labor standards.

The Secretary is authorized pursuant to the provisions of section 4(a) of the Act to hold hearings and make decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of the Act. Pursuant to section 4(a) of the Act, the Secretary's findings of fact after notice and hearing are conclusive upon all agencies of the United States and, if supported by the preponderance of the evidence, conclusive in any court of the United States, without a trial de novo. *United States* v. *Powers Building Maintenance Co.*, 336 F. Supp. 819 (W.D. Okla. 1972). Rules of practice for administrative proceedings are set forth in Part 6 of this Title.

§ 4.190 Contract cancellation.

(a) As provided in section 3 of the Act, where a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency, whereupon, the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(b) Every contractor shall certify pursuant to § 4.6(n) of Subpart A that it is not disqualified for the award of a contract by virtue of its name appearing on the debarred bidders list or because any such currently listed person or firm has a substantial interest in said contractor, as described in § 4.188. Upon discovery of such false certification or determination of substantial interest in a firm performing on a Government contract, as the case may be, the contract is similarly subject upon written notice to immediate cancellation by the contracting agency and any additional cost for the completion of the contract charged to the original contractor as specified in subsection (a), *supra*. Such contract is without warrant of law and has no force and effect and is void ab initio, 33 Comp Gen. 63; Decision of the Comptroller General, B–115051, August 6, 1953. Furthermore, any profit derived from said illegal contract if forfeit (*Paisner* v. *U.S.*, 138 Ct. Cl. 420, 150 F. Supp. 835 (1957), Cert. denied, 355 U.S. 941.)

§ 4.191 Complaints and compliance assistance.

(a) Any employer, employee, labor or trade organization, or other interested person or organization may report to any office of the Wage and Hour Division (or to any office of the Occupational Safety and Health Administration, in instances involving the safety and health provisions), a violation, or apparent violation of the act, or of any of the rules or regulations prescribed thereunder. Such offices are also available to assist or provide information to contractors or subcontractors desiring to insure that their practices are in compliance with the act. Information furnished is treated confidentially. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prvent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a confidential written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal his identity, will not be disclosed without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 522, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) A report of breach or violation relating solely to safety and health requirements may be in writing and addressed to the Regional Administrator of an Occupational Safety and Health Administration Regional Office, U.S. Department of Labor, or to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(c) Any other report of breach or violation may be in writing and addressed to the Assistant Regional Administrator of a Wage and Hour Division's regional office, U.S. Department of Labor, or to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(d) In the event that an Assistant Regional Administrator for the Wage and Hour Division, Employment Standards Administration, is notified of a breach or violation which also involves safety and health standards, the Regional Administrator of the Employment Standards Administration shall notify the appropriate Regional Administrator of the Occupational Safety and Health Administration who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) The report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violations.

(2) The full name and address of the person against whom the report is made.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the McNamara-O'Hara Service Contract Act, or of any of the rules or regulations prescribed thereunder.

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Friday
December 28, 1979

Part IX

Department of Labor

Wage and Hour Division

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend Regulations on labor standards covering federally financed and assisted construction and contracts subject to the Contract Work Hours and Safety Standards Act, Part 5, Subpart A. These regulations are issued pursuant to the Secretary's authority under Reorganization Plan No. 14 of 1950 and 40 U.S.C. 276c. These regulations have not been clarified or brought up to date for several years. There are proposed changes in the contract clauses required in construction contracts, revisions of apprenticeship requirements, revisions of debarment and enforcement procedures, provisions for withholding of money for underpayments on other Federal and Federally assisted contracts when insufficient monies remain under the contract, reclassification of workers for whom no wage was determined on the wage determination, provisions that no debarred contractor may become either a contractor or subcontractor on Federal or Federally assisted work, and also provisions to reduce the agencies' burden of submitting enforcement reports to the Department of Labor.

DATES: Comments must be received on or before February 26, 1980.

ADDRESS: Comments should be sent to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8333.

SUPPLEMENTARY INFORMATION: Pursuant to the Secretary's responsibility under Reorganization Plan No. 14 of 1950 to assure coordination of administration and consistency of enforcement, it is proposed to revise, update, and clarify Subpart A of Regulations, 29 CFR Part 5.

Substantial revisions have been proposed to the labor standards clauses which contracting agencies are required to insert in the contracts. Such proposed changes will affect clauses concerning the method of conforming rates and classifications, the payment of apprentices, the resolution of labor standards disputes, withholding of wage underpayments, debarment of contractors and subcontractors, and the payroll reporting requirements. Consistent with the Secretary's responsibility to prescribe appropriate standards and procedures for contracting agencies to observe in accomplishing their enforcement responsibilities, existing definitions of terms have been clarified and new terms have been added. Also, certain changes have been proposed to ease the contracting agencies' burden of submitting enforcement reports to the Secretary and of informing the Department of decisions concerning the assessment of liquidated damages. Similarly, revisions have been proposed to the procedures for resolving disputes and debarment actions initiated by the Department against contractors. Several other editorial and clarifying changes have also been proposed in keeping with the Administration's objective of clear and concise regulations.

Regulations, 29 CFR Part 6 (Rules of Practice) has also been revised. New procedures have been established for the processing of Davis-Bacon and Related Act (including the Contract Work Hours and Safety Standards Act and Copeland Act) disputes and debarments in a manner similar to those now in existence for Service Contract Act matters. In addition, new Subparts to 29 CFR Part 5, are currently under development, which will codify the policies, rulings, and interpretations under the Davis-Bacon and Related Acts, including the Contract Work Hours and Safety Standards Act and the Copeland Act. These proposals will be published shortly for comment. Major proposed changes are highlighted below.

1. Section 5.2(1)—This new paragraph sets forth in the Regulations the definition of "site of work" currently followed by the Department of Labor.

2. Section 5.5(a)(1)(i)—This revision would include in the contract clauses a statement that laborers and mechanics must be paid the applicable rate for the classification of work performed, without regard to skill.

3. Section 5.5(a)(1)(ii)—This revision expands and clarifies the contract clause regarding the conformance procedure for wage rates and classifications which are not listed on the applicable wage determination. Specifically, this revision provides that the Administrator will approve, reverse, or modify all proposed conformances within 30 days of receipt, and makes clear that conformances will not be issued where there is already a classification on the wage determination which performs the work in question.

4. Section 5.5(a)(2)—This revision provides for the withholding of monies from another Federal contract or Federally assisted contract subject to Davis-Bacon prevailing wage requirements, to satisfy the back wage liability on a contract where violations exist and there are not sufficient funds available for withholding. A similar revision is proposed for § 5.5(b)(3) to cover similar situations under the Contract Work Hours and Safety Standards Act.

5. Section 5.5(a)(3)(ii)—This revision would make it clear that contractors may submit the required payroll information in any form, such as computer print outs or copies of their regular payrolls. Optional Form WH-347 may be used to report the required information if a contractor so desires.

6. Section 5.5(a)(4)—Revisions in this paragraph make it clear that a contractor is required to pay full fringe benefits to apprentices unless the contractor's apprenticeship program stipulates otherwise, or unless the Administrator determines that the payment of less than the full amount of fringe benefits for apprentices is prevailing. These same standards are also being proposed for trainees.

7. Section 5.5(a)(7)—This revision would prevent a debarred firm from performing as a subcontractor.

8. Section 5.5(a)(9)—This revision provides that all labor standards disputes would be resolved in accordance with the procedures set forth in 29 CFR Parts 5, 6, and 7.

9. Section 5.5(a)(10)—This revision provides that a contractor and its subcontractors certify that they are not debarred pursuant to section 3(a) of the Davis-Bacon Act or the proposed 29 CFR 5.12(a)(1).

10. Sections 5.6(b), 5.7, 5.8, and 5.15(c)(3)—These paragraphs would reduce the reporting requirements between the Federal contracting agencies and the Department of Labor.

11. Section 5.11—This revision would eliminate the Administrator from the appellate process in the processing of disputes in order to expedite the resolution of such matters. In addition, this revision provides for debarment to be considered in connection with a hearing to resolve a dispute.

12. Section 5.12—This section would substantially revise the debarment procedures. Any debarment action initiated by the Administrator or an

authorized representative would be forwarded for a hearing before an administrative law judge if requested by the affected parties. Also, in conformance with § 5.11, it is proposed to eliminate the Administrator from the appellate process.

13. Section 5.12(c)—This revision clarifies the removal procedures from the ineligible bidders list for contractors debarred under the statutes listed in § 5.1(a) (except the Davis-Bacon Act) and proposes criteria for removal. Also, this revision provides that a contractor or subcontractor debarred for violations of the labor standards provisions of the statutes listed in § 5.1(a) may not petition for removal until after being debarred for six months.

14. Section 5.14—This section (formerly § 5.13) emphasizes that the Secretary does not have the authority to grant waivers from the statutory Davis-Bacon prevailing wage standards.

It has been determined that the proposed amendments to these regulations do not warrant preparation of a regulatory analysis within the meaning of Executive Order 12044 and the Department of Labor's guidelines (44 FR 5570).

Accordingly, it is proposed to revise Subpart A of Part 5 as set forth below.

Signed at Washington, D.C., on this 21st day of December 1979.

Donald Elisberg,

Assistant Secretary of Labor, Employment Standards Administration.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Sec.

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§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C 276a–276a–7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a). 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; U.S.C. 113(a), as amended), see particularly the amendments in the Federal-Aid Highway Act of 1968 (Pub. L. 90–495, 62 Stat. 815).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(b)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(b)(2)).
24. Hospital Survey and Construction Act, as amended by the Hosiptal and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).
35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).
36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
38. Headstart. Economic Opportunity, and Community Partnership Act of 1974 (sec. 11,

see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1,86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312 92 Stat. 3254, 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.—Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027. Pub. L. 89–694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714. Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Assistant Secretary of Labor for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division, or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the Administrator under this Part. Except as otherwise provided in this Part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency, or other administering agency, such as grant or loan recipients.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Part 1 and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

(h) The term "contract" means any contract in excess of $2,000 which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract, which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution, except where in different meaning is expressly indicated. Under statutes where construction performed by the recipient of Federal assistance is subject to prevailing wage requirements, the terms "contractor" and "contract" as used in this part shall be deemed to include the recipient performing the construction with its own work force and the agreement providing assistance for the construction.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) of items fabricated off-site painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or

furnishing of materials, articles, supplies or equipment on the site of the building or work (or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project), by persons employed by the contractor or subcontractor. However, the term "initial construction" in the Federal-Aid Highway Act of 1956, as amended, does not include repair or maintenance work.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of its proximity.

(2) Fabrication Plants, "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices or branch plant establishments of a contractor or subcontractor, its fabrication plant and tool yard establishments, whose locations and continuance are governed by its general business operations.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor or such person.

(p) The term "wages" means the basic hourly rate of pay; and the contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits, life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, of local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The use of the wage determination shall be subject to the provisions of § 1.7 of this title.

(r) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract subject to the labor standards provisions of any of the acts listed in § 5.1, except those subject only to the Contract Work Hours and Safety Standards Act, the following clauses:

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid (or furnished bona fide fringe benefits) 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 Secretary of Labor under the Copeland Act and 29 CFR 5.110 and 5.111) the full amount of wages and bona fide fringe benefits (or cash equivalents therof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof; regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits 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 (a)(1)(iv) of this

section. also, regular contributions made or costs incurred for more than a weekly period (but not less often than quaterely) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to the skill, except as provided in § 5.5(a)(4). The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified conformably to the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is generally recognized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The administrator, or an authorized representative, will respond within 30 days of receipt thereof and will approve, reverse, or modify every additional classification action.

(C) In the event the contractor, or the laborers or mechanics to be employed in the classification or their representatives, do not agree with the contracting officer on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof, as determined in accordance with Subpart B of 29 CFR Part 5.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, however, The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Witholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintain by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates or contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof 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 29 CFR 5.5(a)(1)(iv) 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 contractor 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.

(ii) The contractor shall submit weekly a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be for transmission to the (write in name of agency). The payrolls shall set out accurately and completely the name and address of each laborer or mechanic, his or her correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. Each payroll shall be accompanied by a "Statement of Compliance" as set forth on the reverse side of Optional Form WH-347 or on any form with identical wording, signed

by the employer or his or her agent indicating that the payrolls are correct and complete, that the wage rates and fringe benefits or cash equivalents shown 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 performed. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor or subcontractor will make the records required under the labor standards clauses of the contract available for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to make the required records available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that they are registered in an approved program and shall identify the program.

(4) *Apprentices and trainees—(i) Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (ii) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in plan(s) registered for that locality shall be observed. The contractor or subcontractor will be required to furnish to the contracting officer written evidence of the registration of the program, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable program, prior to using any apprentices on the contract work. The basic hourly wage rate paid apprentices shall not be less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not mention fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

(ii) *Trainees.* Except as provided in 29 CFR 5.16 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. The contractor or subcontractor will be required to furnish the contracting officer written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates (expressed in percentages of the journeyman hourly rate) prescribed in that program prior to using any trainees on the contract work. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of Subpart D of 29 CFR Part 5, which are herein incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Part 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract 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 or she is employed on such work to work in excess of eight hours in any calendar day or 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 the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1), the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 subparagraph (1), in the sum of $10 for each calendar day on which such individual 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 subparagraph (1).

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring the maintenance of records containing the information specified in § 516.2(a) of this title. Records containing such information shall be preserved for a period of three years from the completion of the contract. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be available for inspection, copying, or transcription, in the manner that inspection of records is available under the terms of paragraph (a)(3)(ii) of this section.

(d) In contracts subject to section 803 of the National Housing Act, the Agency Head shall cause or require the contracting officer to insert the following clause: Every laborer and mechanic employed by the contractor or any subcontractor engaged in the construction of the project, shall receive compensation at a rate of not less than one and one-half times his or her basic or regular rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek whichever is greater.

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) The Federal agency shall make such examination of the submitted payrolls and statements of compliance as may be necessary to assure compliance with the labor standards

clauses required by § 5.5 and the applicable statutes listed in § 5.1. In connection with such examination particular attention should be given to the correctness of classifications and disproportionate employment of laborers, of helpers where they are listed on the wage determination, and of apprentices or trainees registered in approved programs. Such payrolls and statements shall be preserved by the agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) In addition to the examination of payrolls and statements required by paragraph (a)(2) of this section, the Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Projects where the contract is of short duration (6 months or less) will be investigated before the work is accepted, if feasible. In the case of contracts which extend over a long period of time the investigations will be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans to determine the correctness of classifications and disproportionate employment of laborers, of helpers where they are listed on the wage determination, and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an emloyee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation may not be altered or reduced in any way without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful, or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful, and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful, the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator. The report should be prepared in accordance with the "Investigation and Enforcement Manual" published by the Department of Labor with respect to "Labor Standards Provisions Applicable to Contracts Covering Federally-Financed and Assisted Construction". In cases involving underpayments under the Davis-Bacon Act, the report should meet the reporting requirements contained in Comptroller General's Letter B-3368, dated March 19, 1957.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act) giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and

address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) *Findings and recommendations of the Agency Head.* Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined. If the Agency Head does not recommend adjustment or relief from liquidated damages, it is not necessary to seek the concurrence of the Department of Labor, but the Administrator shall be advised of the action taken.

(b) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order.

(c) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in section 5.5 and the applicable statutes listed in section 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of as criminal statute, the payment of wage underpayments shall not be requested and the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Department of Labor hearings.

In the event of disputes concerning the payment of prevailing wage rates, overtime compensation, or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations, upon request by a Federal agency or on the Administrator's own motion, the Administrator may direct a hearing to be held. In cases where the Administrator determines that a hearing may be appropriate, the Administrator will notify the contractor or subcontractor(s) and responsible officers, if any, by registered or certified mail, of the investigation findings and shall advise that a hearing may be requested by letter postmarked within 20 days of receipt of the letter from the Administrator. If the Administrator determines that there is reasonable cause to believe that the contractor or subcontractor should also be subject to debarment action under § 5.12(a)(1) or § 3(a) of the Davis-Bacon Act, the letter shall so indicate. If no hearing is requested within 20 days, the Administrator's findings shall be final except with respect to recommendations regarding debarment under the Davis-Bacon Act as set forth in § 5.12(a)(2). If the contractor or subcontractor requests a hearing, its response to the Administrator shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses which may be raised, with respect to the violations and/or debarment as appropriate. Upon receipt of such a request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached an authenticated copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1, other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or

names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any, (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

In addition to cases under which debarment action is initiated pursuant to § 5.11, (b) whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under § 3(a) thereof, the Administrator shall notify by registered or certified mail the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Adminstrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 20 days of receipt of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached an authenticated copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under 3(a) of the Act.

Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 20 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding bebarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Part 1, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided; for in § 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from part 1 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Part 1 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and

exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island;

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tabacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(f).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficeint to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion therof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as

amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, Bureau of Apprenticeship and Training, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with BAT procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by BAT pursuant to this section, or approved and certified by BAT pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Bureau of Apprenticeship and Training before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration, Bureau of Apprenticeship and Training determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program falls to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved. If the contractor files an appeal pursuant to § 5.18 within 30 days of receipt of a certified letter withdrawing the Bureau of Apprenticeship and Training's approval, the effect of the withdrawal of approval of the program will be delayed until a decision is rendered on the appeal.

§ 5.18 Appeal from Bureau of Apprenticeship and Training's decisions.

(a) Appeal from a withdrawal of approval of a training program by the Bureau of Apprenticeship and Training pursuant to § 5.17 may be made to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210. Appeals brought more than 30 days after the contractor's receipt of notice of withdrawal of approval of a program will be processed, but the effects of withdrawal of approval of the program will not be delayed during consideration of such an appeal.

(b) Appeal from disapproval of new training programs whose approval is requested pursuant to these regulations may be made to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, D.C. 20210.

(c) The Assistant Secretary for Employment and Training (or designee) shall examine the complete record on the basis of which the denial was issued, including the application for the program, supporting data, Bureau of Apprenticeship and Training decision, and any written argument which the applicant may submit, and any reply thereto by the Bureau of Apprenticeship and Training. Copies of any such reply shall be served on the applicant. The Assistant Secretary, or designee, shall approve or disapprove the decision of the Bureau or shall advise what modifications are necessary for approval of the program. This decision by the Assistant Secretary or designee shall be final.

[FR Doc. 79-39588 Filed 12-27-79; 8:45 am]
BILLING CODE 4510-27-M

Federal Register

Friday
December 28, 1979

Part X

Department of Agriculture

Animal and Plant Health Inspection Service

Horse Protection; Notice of Certified Designated Qualified Person Programs and Licensed Designated Qualified Persons

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Horse Protection; Notice of Certified DQP Programs and Licensed DQP's

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Certified DQP Programs and Licensed DQP's pursuant to 9 CFR 11.7(b)(8).

PURPOSE: This notice is to advise the general public and the horse industry of the current Designated Qualified Person (DQP) programs certified by the Department and the currently licensed Designated Qualified Persons (DQP's) under each certified program. The certified DQP programs and the DQP's licensed by each certified program are as follows:

Walking Horse Owners' Association of America, Inc., Murfreesboro, TN 37130

Licensed DQP's

Mr. M. F. Bower, Keyston, IN 46759
Mr. Ray "Tut" Brown, Hohenwald, TN 38485
Mr. Dewey S. Carpenter, Jr., Forest City, NC 28043
Mr. Carl Cartwright, Jr., Tazewell, VA 24651
Mr. Jimmy C. Coffey, Russell Springs, KY 42642
Mr. Tom E. Cundiff, Somerset, KY 42501
Mr. John Allen Dadisman, Lawrenceburg, KY 40342
Mr. Terry Etheridge, Macon, GA 31206
Mr. James Albert Farris, Morehead, KY 40351
Mr. Kenneth Gilpin, Louisville, KY 40222
Mr. Samuel D. Hall, Clinton, MS 39056
Mr. Clyde W. Hayes, Lowgap, NC 27024
Mr. Wayne Henry, Ooltewah, TN 37363
Mr. Mike Hooper, Etowah, TN 37331
Mr. James C. House, Ringgold, GA 30736
Mr. Hugh E. Johnson, Richmond, KY 40475
Mr. Gary Kimmons, Dickson, TN 37055
Mr. Edward T. Lundergan, Ripley, OH 45167
Mr. Donnie May, Richmond, KY 40475
Mr. G. K. Mease, Murrels Inlet, SC 29576
Mr. Lonnie Messick, Murfreesboro, TN 37130
Mr. Everett L. Rayburn, Lawrenceburg, KY 40342
Mr. Bill Reece, Yadkinville, NC 27055
Mr. Danny C. Rylee, Gillsville, GA 30543
Mr. James L. Singleton, Ashton, WV 25503
Mr. Robert G. Stoger, Versailles, KY 40383
Mr. Albert (Bo) Turner, Stone Mountain, GA 30083
Mr. Charles D. Varnadore, Concord, TN 37720
Mr. Kent Wagoner, Richmond, KY 40475
Mr. W. Gerald Welborn, Anderson, SC 29621
Mr. Harold S. White, Franklin, TN 37064
Mr. Johnnie J. Zeller, Eubank, KY 42567

National Walking Horse Regulatory Committee, Shelbyville, TN 37160

Licensed DQP's

Mr. George W. Bacon, Rockwood, TN 37854
Mr. Leland S. Bacon, Rockwood, TN 37854
Mr. Don Bills, Shelbyville, TN 37160
Mr. Larry C. Brachnell, Orrville, AL 36767
Mr. Frank Brown, Frankfort, KY 40601
Mr. Johnny Cabe, Unionville, TN 37180
Mr. James D. Campbell, Murfreesboro, TN 37130
Mr. James E. Cole, Jackson, TN 38301
Mr. Danny R. Davis, Unionville, TN 37180
Mr. Frank Dawson, Elkmont, AL 35620
Mr. Don E. Everett, Lewisburg, TN 37091
Mr. Thomas E. Garland, Mayfield, KY 42066
Mr. Jack O. Kinkade, Elk Grove, CA 95624
Mr. Bill Maack, Jr., Goodson, MO 65659
Mr. Mack Motes, Eagleville, TN 37060
Mr. L. M. Murphy, Shelbyville, TN 37160
Mr. John Price, Lewisburg, TN 37091
Mr. Kenneth Range, New Boston, MI 48164
Mr. Harry Richardson, New Boston, MI 48164
Mr. Harland Smith, Jr., Shelbyville, TN 37160
Mr. W. E. Sullivan, Fort Deposit, AL 36032
Mr. Rick G. Trull, Waverly, TN 37185
Mr. Ronnie Williams, Winchester, TN 37398
Mr. Gene Sills, Wartburg, TN 37887
Mr. R. A. Jack, Moscow, ID 83843
Dr. Dwaine McIntosh, Moses Lake, WA 98837
Ms. Marianne L. Howard, Seattle, WA 98122
Mr. Robert D. Smith, Elma, WA 98541
Mr. S. H. Reames, Jackson, MS 39212
Mr. M. D. Smith, Eupora, MS 39744
Mr. William A. Hartman, Norco, CA 91760
Ms. Janet Briner, McCleary, WA 98557
Mr. Skip Bickford, McCleary, WA 98557
Dr. Samuel F. Gill, Portland, OR 97221
Ms. Barbara A. Hibbard, Reno, NV 89511
Mr. Les Hyatt, Grants Pass, OR 97526
Mr. Jake Price, Carlton, OR 97111
Mr. Lon Whitworth, Gilroy, CA 95020
Ms. Sharon McCaleb, Fair Oaks, CA 95628
Mr. Freeman M. (Lane) Curry, Maple Valley, WA 98038
Mr. Russ Thompson, Chino, CA 91710
Mr. Jimmy K. Sullivan, Raymond, MS 39154
Mr. Ken Willis, Alabaster, AL 35007
Mr. Grady Parsons, Bessemer, AL 35020
Mr. David A. Parsons, Birmingham, AL 35209
Mr. Keith Robinson, Springfield, MO 65804
Mr. George Blades, Billings, MO 65610
Mr. Michael C. Parker, Headland, AL 36345
Mr. Jack Miller, McKinney, TX 75069
Mr. Jerry McKechnie, Pikeville, TN 37367
Mr. Jimmy Small, Benton, KY 42023
Mr. Lee Liles, Germantown, TN 38138
Mr. Lambert Martin, Bedford, VA 24523

Heart of America Walking Horse Association, Inc., Kansas City, MO 64151

No Licensed DQP's at This Time

SUPPLEMENTARY INFORMATION: Section 11.7(b)(8) of the Horse Protection Regulations (9 CFR 11.7(b)(8)) states in relevant part that, "A current list of certified DQP programs and licensed DQP's will be published in the Federal Register at least once each year, and as may be further required for the purpose of deleting programs and names of DQP's that are no longer certified or licensed, and of adding the names of programs and DQP's that have been certified or licensed subsequent to the publication of the previous list." This is the first list of certified programs and licensed DQP's published under regulations which became effective January 5, 1979, and will serve as notice to the general public and the horse industry that the above-mentioned programs have been certified, and the individuals licensed, according to regulations.

Done at Washington, D.C., this 21st day of December, 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-39601 Filed 12-27-79; 8:45 am]
BILLING CODE 3410-34-M

Federal Register

Friday
December 28, 1979

Part XI

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Connecticut— CT79–2011	Apr. 6, 1979.
Florida— FL79–1064	Apr. 13, 1979
Maryland— MD78–3002	Mar. 3, 1978.
North Carolina:	
NC78–1027	Mar. 24, 1978,
NC78–1035; NC78–1036; NC78–1037	Apr. 14, 1978,
NC79–1057	Mar. 30, 1979,
NC79–1085	May 18, 1979.
Pennsylvania:	
PA79–3000	Jan. 25, 1979.
PA79–3003	Mar. 1979.
PA79–3012	May 18, 1979.
South Carolina:	
SC79–1016; SC79–1020	Feb. 2, 1979.
SC79–1037	Mar. 9, 1979.
SC79–1038	Feb. 23 1979.
SC79–1045	Mar. 9, 1979.
SC79–1047; SC79–1048	Mar. 16, 1979.
SC79–1102	June 29, 1979.
SC79–1105	July 6, 1979.
SC79–1124	Sept. 7, 1979.
SC79–1128	Sept. 14, 1979.

Superseded Decision to General Wage Determination Decisions

The numbers of the decisions being supersedes and their dates of publication in the Federal Register are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama; AL79–1001 (AL79–1150); AL79–1001 (AL79–1151); AL79–1001 (AL79–1152); January 26, 1979.

Cancellation of General Wage Determination Decision

None.

Signed at Washington, D.C., this 21st day of December 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CT79-2011 - MOD. #8 (44 FR 20921 - April 6, 1979) Hartford, Middlesex, New Haven, New London, & Tolland Counties, Connecticut					
Change: ELECTRICIANS: Hartford Co.: Berlin, Bristol, New Britain, Newington, Plainville & Southington	$11.80	1.07	3%+.65		½%
New Haven Co.: Remainder of Co.; New London Co.; E. Lyme, New London, Fishers Island Sound Old Lyme, Groton, Waterford & Ledyard (Submarine Based Only)	11.80	1.07	3%+.65		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PL79-1064 - Mod. #6 (44 FR 22308 - April 13, 1979) Orange County, Florida					
Change: Carpenters	$6.94				

DECISION NO. MD78-3002 MOD. #6
(42 FR 9076 - March 3, 1978)
Allegany & Garrett Counties, Maryland

OMIT:
Front end loaders (up to & including 2 yds.) from Group 3 of the Classification Definition for Power Equipment Operators under both Heavy and Highway Construction

Front end loader (over 2 yds.) from Group 1 of Classification Definitions for Power Equipment Operators under both Heavy and Highway Construction

ADD:
Front end loader (1 3/4 yds. and over) to Group 1 of the Classification Definitions for Power Equipment Operators under both Heavy and Highway Construction
Front end loader (under 1 3/4 yds.) to Group 2 of the Classification Definitions for Power Equipment Operators under both Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS	$11.19	.65	.40		
CARPENTERS	11.62	.50	.60		.02
CEMENT MASONS	11.88	.50			
ELECTRICIANS:					
Allegany County	11.40	.80	3%+.70		1%
Garrett County	11.80	.80	3%+.70		1%
IRONWORKERS:					
Structural & Reinforcing	11.72	.60	1.10		
LABORERS:					
Group 1	8.78	.80	1.10		
Group 2	8.90	.80	1.10		
Group 3	8.97	.80	1.10		
Group 4	8.57	.80	1.10		
Group 5	9.08	.80	1.10		

MODIFICATIONS P. 3

DECISION NO. MD78-3002
(MOD. #6 Cont'd)
42 FR 9076 - March 3, 1978

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (Cont'd)					
Group 6	$9.04	.80	1.10		
Group 7	9.00	.80	1.10		
Group 8	9.60	.80	1.10		
Group 9	9.24	.80	1.10		
PILEDRIVERMEN	11.91	.50	.60		.02
TRUCK DRIVERS:					
Group 1	8.71	.90	1.10		
Group 2	8.86	.90	1.10		
Group 3	9.06	.90	1.10		
Group 4	9.26	.90	1.10		
Group 5	9.49	.90	1.10		
POWER EQUIPMENT OPERATORS:					
Heavy Construction					
Group 1	11.01	.95	1.00		.13
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads; 130' to 169' plus 40¢ 170' to 209' plus 60¢ 210' to 249' plus 80¢ 250' to 299' plus $1.00 300' and over $1.25					
Group 2	10.59	.95	1.00		.13
Group 3	10.25	.95	1.00		.13
Group 4	10.25	.95	1.00		.13
Group 5	9.93	.95	1.00		.13
Group 6	9.54	.95	1.00		.13
Group 7	11.41	.95	1.00		.13
Highway Construction					
Group 1	10.83	.95	1.00		.13
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads; 130' to 169' plus 40¢ 170' to 209' plus 60¢ 210' to 249' plus 80¢ 250' to 299' plus $1.00 300' and over $1.25					
Group 2	10.37	.95	1.00		.13
Group 3	10.07	.95	1.00		.13

MODIFICATIONS P. 4

DECISION NO. MD78-3002
(MOD. #6 Cont'd)
42 FR 9076 - March 3, 1978

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Highway Construction Cont'd.					
Group 4	$10.07	.95	1.00		.13
Group 5	9.72	.95	1.00		.13
Group 6	9.37	.95	1.00		.13
Group 7	11.23	.95	1.00		.13

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #NC78-1027 - Mod. #3 (43 FR 12602 - March 24, 1978) Gaston, Lincoln, Mecklenburg, and Union Counties, North Carolina					
Change:					
Laborers:					
Laborers, unskilled	$ 3.10				
Sprinkler Fitters (Mecklenburg and Union Counties)	10.28	.75	1.05		.08
DECISION #NC78-1035 - Mod. #2 (43 FR 16095 - April 14, 1978) Chatham, Harnett, Lee, and Moore Counties, North Carolina					
Omit:					
Laborers:					
Mason Tenders	3.00				
Power Equipment Operators:					
Forklifts	3.00				
Front end loaders	3.00				
Scrapers	3.00				
Change:					
Laborers:					
Laborers	3.10				
Sprinkler fitters (Chatham and Lee Counties)	10.28	.75	1.05		.08
DECISION #NC78-1036 - Mod. #2 (43 FR 16095 - April 14, 1978) Guilford County, North Carolina					
Change:					
Laborers:					
Laborers	3.10				
Sprinkler fitters	10.28	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #NC78-1037 - Mod. #2 (43 FR 16096 - April 14, 1978) New Hanover County, North Carolina					
Change:					
Laborers:					
Laborers	$ 3.10				
Sprinkler fitters	10.28	.75	1.05		.08
Truck Drivers	3.10				
DECISION #NC79-1057 - Mod. #1 (44 FR 19125 - March 30, 1979) Burke, Catawba, Cleveland, Lincoln, Polk, and Rutherford Counties, North Carolina					
Change:					
Laborers	3.10				
DECISION #NC79-1085 - Mod. #1 (44 FR 29253 - May 18, 1979) Craven, Carteret, Duplin, Green, Johnson, Jones, Lenoir, Onslow, Pamlico, and Wayne					
Change:					
Laborers:					
Laborers	3.10				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA79-3000					
MOD. NO. 6					
(44 FR 5625 - January 25, 1979)					
Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntingdon, Mifflin & Potter Counties, Pennsylvania					
CHANGE:					
LINE CONSTRUCTION:					
ZONE 2					
Journeyman	$12.05	.45	3%		3/8%
Experience Winch Truck Op.	8.43	.45	3%		3/8%
Experience Truck Driver	7.83	.45	3%		3/8%
Experience Groundman	7.23	.45	3%		3/8%
DECISION NO. PA79-3003					
MOD. NO. 2					
(44 FR 13228 - March 9, 1979)					
Lawrence & Mercer Counties, Pennsylvania					
CHANGE:					
Modification NO. 4, in 44 FR 72809, dated December 14, 1979 to read Modification NO. 1.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA79-3012					
MOD. NO. 3					
(44 FR 29253 May 18, 1979)					
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, Dauphin, Juniata, York Cos.					
CHANGE:					
LINE CONSTRUCTION:					
Adams, Cumberland, Dauphin, Lancaster, Lebanon, Juniata, Perry & York Cos.					
Journeymen Lineman	$12.05	.45	3%		3/8%
Experience Winch Truck Op.	8.43	.45	3%		3/8%
Experience Truck Driver	7.83	.45	3%		3/8%
Experience Groundman	7.23	.45	3%		3/8%
Berks, & Lehigh Cos.					
Journeyman Lineman	11.46	.45	3%		3/8%
Experience Winch Truck Op.	7.98	.45	3%		3/8%
Experience Truck Driver	7.40	.45	3%		3/8%
Experience Groundman	6.82	.45	3%		3/8%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC79-1016 - Mod. #1 (44 FR 6888 - February 2, 1979) Beaufort, Colleton, Hampton, & Jasper Counties, South Carolina					
Change:					
Laborers	$3.10				
Sprinkler Fitters	10.28	.75	1.05		.08
DECISION #SC79-1020 - Mod. #1 (44 FR 6888 - February 2, 1979) Chester, Chesterfield, Fairfield, Kershaw, and Lancaster Counties, South Carolina					
Change:					
Laborers	3.10				
Truck Drivers	3.10				
Sprinkler Fitters (Fairfield & Kershaw Counties)	10.28	.75	1.05		.08
DECISION #SC79-1037 - Mod. #1 (44 FR 13230 - March 9, 1979) Sumter County, South Carolina					
Change:					
Laborers	3.10				
Truck Drivers	3.10				
DECISION #SC79-1038 - Mod. #1 (44 FR 10934 - February 23, 1979) Cherokee, Union, & York Counties, South Carolina					
Change:					
Laborers:					
Laborers, Unskilled	3.10				
Sprinkler Fitters	10.28	.75	1.05		.08
Truck Drivers	3.10				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC79-1045 - Mod. #1 (44 FR 13232 - March 9, 1979) Abbeville, Edgefield, Greenwood, Laurens, McCormick, Newberry, and Saluda Counties, South Carolina					
Change:					
Laborers:					
Laborers, unskilled	$3.10				
DECISION #SC79-1047 - Mod. #1 (44 FR 16322 - March 16, 1979) Greenville County, South Carolina					
Change:					
Ironworkers, Structural and Ornamental	10.00	.60	.50		.02
Laborers:					
Laborers, unskilled	3.10				
Sprinkler Fitters	10.28	.75	1.05		.08
DECISION #SC79-1048 - Mod. #1 (44 FR 16295 - March 16, 1979) Spartanburg County, South Carolina					
Change:					
Laborers:					
Laborers, unskilled	3.10				
Sprinkler fitters	10.28	.75	1.05		.08
DECISION #SC79-1102 - Mod. #1 (44 FR 38105 - June 29, 1979) Abbeville, Greenwood, Laurens, McCormick, Newberry, and Saluda Counties, South Carolina					
Change:					
Laborers	3.10				
Truck Drivers	3.10				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #SC79-1105 - Mod. #1 (44 FR 39934 - July 6, 1979) Clarendon, Darlington, Dillon, Florence, Lee, Marion, Marlboro, Sumter, and Williamsburg Counties, South Carolina					
Omit:					
Pipelayers	$3.10				
Change:					
Laborers:					
Laborers, unskilled	3.10				
Truck drivers	3.10				
DECISION #SC79-1124 - Mod. #1 (44 FR 52578 - September 7, 1979) Aiken, Allendale, Bamberg, Barnwell, Calhoun, Edgefield, and Orangeburg Counties, South Carolina					
Change:					
Laborers:					
Laborers, unskilled	3.10				
Truck Drivers	3.10				
DECISION #SC79-1128 - Mod. #1 (44 FR 53661 - September 14, 1979) Lexington and Richland Counties, South Carolina					
Change:					
Laborers:					
Unskilled	3.10				
Sprinkler fitters	10.28	.75	1.05		.08

SUPERSEDEAS DECISION

STATE: Alabama COUNTY: Jefferson County Zone 1
DECISION NUMBER: AL79-1150 DATE: Date of Publication
Supersedes Decision No.: AL79-1001, dated January 26, 1979 in 44 FR-5601
DESCRIPTION OF WORK: Highway construction projects (does not include bridges over navigable waters; tunnels; building structures in rest area projects and railroad construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	3.65				
Carpenters	5.66				
Concrete finishers	5.23				
Concrete saw	3.05				
Electricians	12.05	.55	3%+.40		½ of 1%
Ironworkers:					
Structural	9.25				
Reinforcing	5.19				
Laborers:					
Air tool operators	3.25				
Asphalt rakers	4.35				
Concrete laborers	4.00				
Pipelayers	3.45				
Powderman and blasters	4.00				
Saw	3.50				
Side rail or form setters	5.00				
Unskilled	3.10				
Wagon drill	4.00				
Painters	5.75				
Piledrivermen	5.60				
Truck Drivers:					
Under 1½ tons	3.25				
Single rear axle	3.25				
Multi-rear axle or heavy duty, off road, single axle	3.48				
Winch truck & A-Frame	3.70				
Welders - Receive rate for craft					
POWER EQUIPMENT OPERATORS:					
Aggregate spreaders	4.10				
Air compressors	3.25				
Asphalt distributor	5.51				
Asphalt spreader	6.65				
Asphalt mixers and pug mills & batch plants	3.95				

POWER EQUIPMENT OPERATORS CONT'D:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt plant driers	3.95				
Bulldozers	6.00				
Bull floats	3.25				
Concrete mixers (3 bags and under)	3.25				
Concrete mixers (over 3-bags)	3.95				
Concrete paving machine	3.95				
Concrete paving finishing machine	3.95				
Concrete paving spreaders	3.95				
Cranes, clamshells, backhoe derricks, dragline or shovels	6.55				
Conveyors	3.25				
Crusher and screening plants	3.95				
Drilling machines	5.00				
Elevating graders, gradall or trenching	6.28				
Firemen	3.25				
Form graders	3.25				
Hoist (2-drums or 2-cages or more)	3.95				
Hoist (1 drum)	3.25				
Mechanics	6.00				
Motor patrols	6.60				
Oilers and greasemen	5.94				
Paving subgraders	3.25				
Piledrivers	4.55				
Pumps	3.25				
Pumpcretes	3.25				
Rollers, self-propelled	5.72				
Rollers, self-propelled on asphalt bases & pavements)	6.00				
Scale operators	3.25				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Scalemen	3.25				
Scrapers	6.00				
Seeding and mulching machines	4.00				
Striping machines (paint)	4.75				
Tractors and loaders (farm rubber tired)	3.50				
Tractor & Loaders (80 H.P. or less)(draw-bar capacity)	4.98				
Tractors and loaders (over 80 H.P.)	6.00				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses(29 CFR, 5.5 (a)(1)(ii)

SUPERSEDEAS DECISION

STATE: Alabama COUNTY: Mobile Zone II
DECISION NUMBER: AL79-1151 DATE: Date of Publication
Supersedes Decision No: AL79-1001, dated January 26, 1979 in 44 FR-5601
DESCRIPTION OF WORK: Highway Construction Projects (does not include bridges over navigable waters; tunnels; building structures in rest area projects and railroad construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	3.65				
Carpenters	5.00				
Concrete finishers	5.50				
Concrete saw	3.10				
Electricians	12.05	.55		3%+.40	.05
Ironworkers:					
Structural	6.50				
Reinforcing	6.00				
Laborers:					
Air tool operators	3.25				
Asphalt rakers	3.75				
Concrete laborers	4.00				
Pipelayers	3.75				
Powderman and blasters	4.00				
Saw	3.50				
Side rail or form setters	5.00				
Unskilled	3.10				
Wagon drill	4.00				
Painters	5.75				
Piledrivermen	6.75				
Truck Drivers:					
Under 1½ tons	3.25				
Single rear axle	3.25				
Multi-rear axle or heavy duty, off road, single axle	3.83				
Winch truck and A-Frame	3.25				
Welders - Receive rate for craft.					
POWER EQUIPMENT OPERATORS:					
Aggregate spreader operator	4.10				
Air compressor	3.15				
Asphalt distributor	5.00				
Asphalt spreader	5.38				
Asphalt mixers and pug mills & batch plants	3.95				
Asphalt plant driers	3.95				

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bulldozers	4.50				
Bull floats	3.44				
Concrete mixers (3-bags and under)	3.44				
Concrete mixers (over 3-bags)	3.95				
Concrete paving machine	3.95				
Concrete paving finishing machine	3.95				
Concrete paving spreaders	3.95				
Cranes, clamshells, backhoes derricks, draglines or shovels	7.00				
Conveyors	3.25				
Crusher and screening plants	3.95				
Drilling machines	5.00				
Elevating graders, gradalls or trenching	5.25				
Firemen	3.25				
Form graders	3.25				
Hoist (2-drums or 2-cages or more)	3.95				
Hoist (1 drum)	3.44				
Mechanics	6.41				
Motor patrols	5.85				
Oilers and greasemen	4.00				
Paving subgraders	3.25				
Piledrivers	4.85				
Pumps	3.25				
Pumpcretes	3.25				
Rollers, self-propelled	3.50				
Rollers, self-propelled (on asphalt bases and pavements)	5.08				
Scale operators	3.25				
Scalemen	3.25				
Scrapers	4.50				
Seeding and mulching machines	4.00				
Striping machines (paint)	4.00				
Tractors and loaders (farm rubber tired)	3.50				
Tractor & loader (80 H.P. or less) (draw-bar capacity)	4.00				
Tractors and loaders (over 80 H.P.)	4.75				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)

STATE: Alabama COUNTIES: *See below
DECISION NUMBER: AL79-1152 DATE: Date of Publication
Supersedes Decision No.: AL79-1001, dated January 26, 1979 in 44-FR-5601
DESCRIPTION OF WORK: Highway Construction Projects(does not include bridges over navigable waters; tunnels; building structures in rest area projects and railroad construction)

*Zone III Counties: Calhoun, Etowah, St. Clair, Shelby, Talladega, Tuscaloosa and Walker

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	3.65				
Carpenters	5.27				
Concrete finishers	4.75				
Concrete saw	3.05				
Electricians	12.05	.55	3%+.40		½ of 1%
Ironworkers:					
Structural	5.80				
Reinforcing	4.50				
Laborers:					
Air tool operators	3.25				
Asphalt rakers	4.60				
Concrete laborers	3.25				
Pipelayers	3.50				
Powderman and blasters	4.00				
Saw	3.50				
Side rail or form setters	3.72				
Unskilled	3.10				
Wagon drill	4.00				
Painters	5.50				
Piledrivermen	5.40				
Truck Drivers:					
Under 1½ tons	3.25				
Single rear axle	3.25				
Multi-rear axle or heavy duty, off road, single axle	3.34				
Winch truck and A-Frame	3.25				
Welders - receive rate for craft					
POWER EQUIPMENT OEPRATORS:					
Aggregate spreader	4.10				
Air compressors	3.15				
Asphalt distributor	5.25				
Asphalt spreader	5.25				
Asphalt mixers and pug mills & batch plant	3.95				

AL79-1152 (Cond't)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: CONT'D					
Asphalt plant driers	3.95				
Bulldozers	5.72				
Bull floats	3.25				
Concrete mixers (3 bags and under)	3.25				
Concrete mixers (over 3-bags)	3.95				
Concrete paving machines	3.95				
Concrete paving finishing machines	3.95				
Concrete paving spreaders	3.95				
Cranes, clamshells, backhoes derricks, draglines or shovels	5.58				
Conveyors	3.25				
Crusher and screening plants	3.95				
Drilling machines	5.00				
Elevating graders, gradalls or trenching	4.75				
Firemen	3.25				
Form graders	3.25				
Hoist (2-drums or 2-cages or more)	3.95				
Hoist (1 drum)	3.25				
Mechanics	6.00				
Motor patrols	5.91				
Oilers and greasemen	4.00				
Paving subgraders	3.25				
Piledrivers	3.66				
Pumps	3.25				
Pumpcretes	3.25				
Rollers, self-propelled	4.00				
Rollers, self-propelled (on asphalt bases and pavements)	4.11				

AL79-1152 (Cond't)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Scale operators	3.25				
Scalemen	3.25				
Scrapers	6.00				
Seeding and mulching machines	4.00				
Striping machines (paint)	4.10				
Tractors and loaders (farm rubber tired)	3.46				
Tractor & loaders (80 H.P. or less)(draw-bar capacity)	4.00				
Tractors and loaders (over 80 H.P.)	5.17				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

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Federal Register

Part XII

Department of Energy

Economic Regulatory Administration

Voluntary Guideline on Procedures for Termination of Electric Service and Gas Service Under the Public Utility Regulatory Policies Act of 1978

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-47]

Voluntary Guideline on Procedures for Termination of Electric Service and Gas Service Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Voluntary Guideline.

SUMMARY: Titles I and III of the Public Utility Regulatory Policies Act of 1978 (PURPA) establish certain Federal purposes and policy standards for the regulation of gas and electric utilities and impose certain obligations upon State regulatory authorities and certain nonregulated utilities with respect to the standards established by sections 111, 113 and 303.

Pursuant to section 131 of PURPA and the Secretary of Energy's inherent authority to render statements of policy, opinion or interpretation where deemed necessary or appropriate to effectuate national energy policy objectives, the Secretary of Energy may prescribe voluntary guidelines respecting consideration of standards for electric and gas utilities. On October 15, 1979, the Department of Energy (DOE) issued a Notice of Proposed Voluntary Guideline for the Procedures for Termination of Electric Service and Gas Service Standards Under the Public Utility Regulatory Policies Act of 1978 (44 FR 60658, October 19, 1979). This Notice summarizes in the Preamble the public comments DOE received and presents the guideline in its final form as the Appendix hereto.

FOR FURTHER INFORMATION CONTACT:

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I. Background

On November 8, 1978, the President signed into law the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), as one part of the National Energy Act.

Section 113(b)(4) of Title I of PURPA establishes a standard on Procedures for Termination of Electric Service for State regulatory authorities and certain nonregulated electric utilities. The standard applies to those electric utilities whose annual retail sales exceed 500 million kilowatt-hours in any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. Section 115(g) sets forth certain special rules regarding this standard.

A similar Federal policy standard is established by section 303(b)(1) of Title III of PURPA for gas utilities. This standard applies to those gas utilities who annual retail sales exceed 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. Section 304(a) sets forth certain special rules regarding this standard.

The Termination of Service Standard for both gas and electric utilities, which must be considered by State regulatory authorities and certain nonregulated utilities in a manner specified by PURPA, provides that:

(1) No electric (gas) service to an electric (gas) consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) During any period when termination of service to an electric (gas) consumer would be especially dangerous to health as determined by the State regulatory authority (with respect to an electric (gas) utility for which it has ratemaking authority) or nonregulated electric (gas) utility and such consumer establishes that—

(A) He is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) He is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

In the Federal Register notice of October 19, 1979, DOE solicited public comment on the content of the proposed guideline. DOE also sought the views of hundreds of private organizations, State and local agencies, Federal agencies and other interested persons through a special mailing. Testimony was received from 22 speakers at the public hearing held in Washington, D.C. on November 20, 1979. Written comments were received from about 60 additional respondents. Among those commenting were State utility commissions, publicly and privately-owned electric and gas utilities, and consumer organizations.

DOE carefully evaluated the proposed guideline in light of the comments received, each of which was read and analyzed. When, after discussion and review, DOE determined that a comment was of sufficient importance to warrant changes in the proposed guideline, the guideline was modified accordingly. When the rational supporting the proposed guideline was stronger than the arguments challenging it, the guideline was left unchanged. Part III of the Preamble describes by section the more significant comments received and how DOE responded to them.

II. Purpose

The purpose of this voluntary guideline is to assist State regulatory authorities and nonregulated utilities in their consideration of the Procedures for Termination of Electric Service and Gas Service standards established under Title I and Title III of PURPA, respectively. The guideline addresses four major issues raised in PURPA sections 115(g) and 304(a): reasonable prior notice, reasonable opportunity to dispute, protection during health emergencies, and special provisions for elderly and handicapped.

DOE wishes to reiterate that the policy guidance set forth herein is advisory in nature and is not legally binding. It does, however, constitute DOE's views on the manner in which the termination standard should be implemented. Accordingly, the guideline complements, and is fully consistent with, the other activities undertaken by DOE pursuant to PURPA.

Section 131 of PURPA authorizes the Secretary of Energy to prescribe voluntary guidelines for the PURPA standards which relate to electric utilities. Section 303(b)(1) of PURPA establishes a termination of service standard for natural gas utilities parallel to that established by Title I of PURPA for electric utilities. Because of the importance of this standard for both electric and gas consumers, it is DOE's opinion that State regulatory authorities and nonregulated utilities should consult the proposed guideline when considering the termination of service standard for natural gas utilities, as well as when considering the termination of service standard for electric utilities.

The importance of the service termination standard is such that reconsideration of the standard may be

warranted even in those jurisdictions where earlier proceedings have been previously deemed to constitute adequate consideration.

III. Discussion of Comments and DOE's Response

The following is a discussion of comments received and DOE's response to these comments. This discussion is organized according to general comments, definitions, and the four major issues surrounding the termination of service standard.

A. *General.* (1) *Objectives of Guidelines.* Some commenters indicated that detailed guidelines were unnecessary and that only the final result desired should be stated thereby allowing any State regulatory authority or nonregulated utility to achieve the final result in its own way.

DOE agrees that the objectives of the guideline should be clearly stated and has rewritten Part A of the Appendix accordingly. If the purpose of the standard can best be achieved by means other than those set forth in this guideline, it would be appropriate to employ those means provided that they include the four major features specified in PURPA: reasonable prior notice; reasonable opportunity to dispute; protection during health emergencies; and reasonable provisions for the elderly and the handicapped. This guideline represents DOE's opinion of the minimum efforts necessary to achieve the intent of the termination of service standard and is not designed to substitute for policies providing even greater protection.

(2) *"Safety" as a Reason for Not Terminating Service.* DOE has removed references to "safety" of the consumer as a justification for not terminating service. This deletion was made because the PURPA standards do not mention the word "safety" but refer instead to any period especially dangerous to health.

(3) *Authority to Include Gas Utilities.* Several commenters questioned whether DOE has authority to issue a voluntary guideline on termination of gas service.

Title III of PURPA does not give DOE express authority comparable to that provided by section 131 with respect to electric utilities to issue guidelines relating to gas utility standards. However, the Secretary of Energy has inherent authority to render statement of policy, opinion or interpretation where deemed necessary or appropriate to effectuate national energy policy objectives or particular missions of DOE. Such objectives and missions include protection of the interests of consumers in the availability of an adequate and reliable supply of energy under reasonable terms and conditions. Moreover, issuance of a voluntary guideline related to a specific Federal statutory standard for termination of service by gas utilities furthers the purpose of, and is consistent with, the additional authorities, e.g., intervention authority, provided to the Secretary of Energy by PURPA.

(4) *Financial Impact on the Utility.* Several commenters expressed concern about the expected costs of the termination policy to the utility, those consumers primarily protected by the termination policy, and other ratepayers.

DOE realizes that certain costs are involved in implementing a termination of service policy but believes that these are outweighted by the benefits. As a matter of sound regulatory policy, any change in uncollectible accounts, once a termination of service policy is implemented, should be quantitatively analyzed to determine that portion actually associated with that policy. The change in uncollectible accounts associated with the termination of service policy should then be compared with those net changes in late payment revenues also associated with that policy. The recovery by the utility, within a reasonable period of time, of all costs, including uncollectibles, arising from adoption of a service termination policy ought to be assured by the regulatory authority in a manner which is equitable to ratepayers and stockholders.

(5) *Nature of Guideline.* Several commenters suggested that the guideline should be more specific in its recommendations in order to provide consumers the protection intended by Congress. Several others expressed the belief that the guideline should be more general to permit greater flexibility by State regulatory authorities and nonregulated utilities in dealing with the particular conditions confronting them at the State and local levels.

DOE sees merit in both of these viewpoints. Accordingly, certain of the recommendations in the guideline were made less specific where it became apparent that a specific recommendation would not be appropriate for all situations, and other recommendations were made more specific when lack of specificity provided inadequate guidance.

(6) *Social Impact.* Several commenters indicated that the utility should not be used as a social welfare agency. Others indicated that the utility should more fully participate in easing the financial burden on poor, elderly and handicapped consumers.

DOE believes that utilities, being providers of an essential service, should to the maximum extent practicable provide such service in a manner that furthers the national effort to ease the burdens that many poor, elderly, and handicapped consumers can experience in paying escalating energy bills, especially during the heating season in cold climates. If utilities act in this manner, those most in need will be given proper and appropriate consideration and assistance in paying their utility bills.

DOE recognizes that this guideline and the actions taken by State regulatory authorities and nonregulated utilities with respect to termination of service cannot eliminate the serious problems confronted by the poor, the elderly and the handicapped in times of rising energy prices. However, this guideline and the termination of service policies adopted by State regulatory authorities and nonregulated utilities can provide an effective complement to other actions taken in both the public and private sectors to respond to these problems.

(7) *Combination Utilities.* The comment was made that those utilities providing both gas and electric service should not terminate both services when a consumer's payment is only sufficient to cover the bill for one service.

DOE agrees with this comment and has incorporated it in the Coverage section of the Appendix. The gas and electric services provided by combination utilities should be separately considered when termination of service for nonpayment is involved.

(8) *Consumer Classes Covered.* Some commenters recommended that the guideline apply only to residential consumers.

DOE believes that reasonable prior notice and reasonable opportunity to dispute the reasons for termination should be available to all consumer classes. However, in accordance with PURPA legislative history, the provisions in the guideline relating to inability to pay during any period when termination would be especially dangerous to health are intended to apply principally to residential consumers (including tenants and homeowners).

(9) *Termination Ban.* Some commenters argued that a ban on service termination during certain specified periods would lead to abuses by both lower and upper income groups, increase uncollectibles, be unfair to other consumers, and be ultimately unfair to the poor because of large accumulated bills which must eventually be paid to avoid termination.

DOE is not altering its advice that termination of service should not take place during any period when termination would be especially dangerous to health and the consumer is unable to pay.

DOE believes that any problems with such a policy can be guarded against by careful thought in establishing and administering that policy. Abuses can be discouraged by establishing reasonable and cost-related late payment charges, identifying at an early date those qualifying as elderly or handicapped, and working with the poor and agencies providing financial assistance to provide for a smooth transfer of funds when the need arises, or by making provisions for deferred payment plans. With proper planning, termination notices, late payments, uncollectibles, and consumer dissatisfaction may be kept to a minimum.

B. *Definitions.* Several commenters indicated that the guideline should provide definitions for the terms "elderly," "handicapped," "appliances essential for maintenance of health," and "periods especially dangerous to health."

DOE agrees that further guidance on those items would be helpful and has amended the guideline to include such definitions. For the purposes of this guideline, the definition of elderly is based on the early Social Security retirement age of 62 years. The definitions of handicapped and appliances essential for the maintenance of health are based on a composite of comments received. Since it is not possible to define, on a national basis, all periods when termination would be dangerous to health, DOE has provided only a general definition and has left specific determinations to be made on the local level by the appropriate regulatory authority.

It should be noted that the guideline, consistent with the PURPA Conference Report, makes a distinction between the consumer (the individual to whom the electric energy or gas is sold) and any other members of the consumer's household.

C. *Reasonable Prior Notice.* (1) *Exceptions to Prior Notice.* Several commenters argued that there should be allowances in the guideline for termination of service without prior notice. Examples of special circumstances recommended for exception by the commenters were (a) existence of hazardous conditions, (b) unauthorized use of electricity, and (c) tampering with company property.

DOE agrees that notice may not be possible prior to service termination for specific situations such as storms, cable breaks, accidents, and other cases involving emergency maintenance or hazardous conditions. Such terminations are usually of short duration with service restored as soon as possible and are usually looked upon as an interruption of service rather than a termination of service. However, DOE does not believe there should be exceptions to permit immediate termination for alleged violations such as unauthorized use of electricity or gas or tampering with company property as such exceptions would place the utility in the position of taking punitive action before the consumer has had an opportunity to investigate the matter and respond to the allegation.

(2) *Method of Providing Termination Notices.* Commenters objected to the use of registered or certified mail, subsequent to the first termination notice, due to its cost as well as the possibility that consumers may not be at home when the mail is delivered.

DOE agrees that registered or certified mail does not guarantee that the consumer will be notified and, for this reason, is not necessarily superior to first class mail. Therefore, first class mail or personal contact is acceptable for any notice except when elderly and handicapped consumers are involved. For an elderly and a handicapped consumer, personal contact with that individual or with another adult at the service address is recommended for the final notice. if an attempt to make personal contact is unsuccessful, the final termination notice should be posted at the residence in a conspicuous location. Final termination notice should be received by the elderly and the handicapped and the State regulatory authority, governing body of the nonregulated utility or a designated alternate agency at least 48 hours prior to actual termination. This time period excludes weekends and holidays and was selected to permit the elderly and the handicapped and the designated authority time to take appropriate action regarding the proposed termination.

(3) *Minimum Days Notice Prior to Termination.* Commenters urged that the guidelines specify a minimum time between the first termination notice and actual termination (periods from one to a few weeks were recommended).

DOE agrees that some minimum reasonable time should be provided between the mailing of the first termination notice and the actual termination to allow the consumer sufficient time to take necessary action to avoid termination. Therefore, DOE is recommending that a minimum of 10 calendar days be provided between the first notice of termination and the date after which termination could take place. The selection of this time period was based on considerations of mail delivery schedules and a reasonable time for the recipient of the notice to take action to avoid termination.

(4) *Statement of Termination Policy.* Some commenters felt that providing the termination of service policy statement to all consumers would be costly and only marginally useful since most consumers would not need such information.

DOE rejects this comment because it believes that all consumers should be informed of utility policies with respect to service termination just as they are apprised of billing policies and rate structures. It is impossible to predict which consumers will require knowledge of termination of service policies, including the statement of rights and remedies.

(5) *Content of Statement of Termination Policy and Notice of Proposed Termination.* Many commenters offered suggestions on items to be added, deleted or reworded in the policy statement and notice of proposed termination.

The major change in the guideline as a result of these comments is that the notice of rights and remedies has been included in the statement of termination policy so that consumers can be informed initially of their responsibilities as well as their rights. The item "general starting and ending dates of the payment period" has been removed from the list of items to be provided in the statement of termination policy since these dates could vary greatly for different consumers served by a utility. The item "dates of meter readings for period of unpaid service" has been removed from the list of items to be provided in the notice of proposed termination due to the expense involved in providing this information and because the item "time period over which the amount was incurred" should be sufficient.

The following items were added to the general policy statement to provide further information to the consumers: grounds for termination, steps which must occur before service may be terminated for nonpayment, and steps necessary to have service reinstated. An additional statement in the notice of rights and remedies advises elderly and handicapped consumers that they are responsible for notifying utilities of their status. The statement regarding a consumer's obligation concerning disputed bills has been modified, and a section on procedures to dispute the decision of the utility has been added.

The items in the general policy statement and notice of proposed termination have been reorganized for clarity.

(6) *Sources of Financial Aid.* Some commenters stated that utilities were not social referral agencies and should not be required to provide consumers with a list of possible sources of financial assistance.

DOE believes that neither the utility nor the consumer will benefit by hasty terminations resulting in uncollectibles. Many consumers, unable to pay their bill, may not be aware of possible sources of financial assistance or may be confused as to where to apply for such aid. The utility, with limited effort, could provide this information and thereby benefit the poor, other ratepayers and stockholders. Such listings, updated at reasonable intervals, should not impose an unreasonable burden on utilities.

(7) *Notification of Tenants.* Some commenters objected to providing individual termination notice to tenants in master-metered apartment buildings where the tenants are not directly responsible for paying the utility bill.

DOE believes tenants in master-metered buildings, although not explicitly included under the definition of consumer, should have prior notice of termination in order to properly prepare themselves for the hardships to be experienced in the event of termination. In addition, the tenants should have a reasonable opportunity to take appropriate action to avoid termination. However, DOE understands that individual notification may not be possible in all instances and has therefore suggested means of providing collective notification.

(8) *Landlord Privacy Rights.* Several commenters objected to tenant notification of the utility's intent to terminate service because such action might violate a landlord's right of privacy.

DOE believes that the interest of the tenant in being notified of imminent termination of his heat, lights, and applicances outweighs a landlord's interest in preventing publication of his nonpayment of utility bill.

(9) *Advising Tenants.* Commenters objected to the utility being required to provide advice to tenants on their rights vis-a-vis a landlord's rights in instances of potential services termination.

DOE does not intend that the utility provide legal counsel to tenants, but simply relay those acceptable and workable alternatives to termination which are familiar to the utility as a result of its day-to-day operations. DOE removed the item "recourse through agencies responsible for enforcing housing codes" from the list of alternatives because it is a component of the item "other possibilities available in the jurisdiction involved."

(10) *Inability to Pay.* Several commenters requested some guidance on how to establish a consumer's inability to pay.

DOE is not providing specific guidance on this issue since it would be unrealistic to establish firm criteria on a national basis. Such criteria should consider local conditions, such as seasonal employment, average income, and cost of living, and special circumstances of the individual consumer, such as illness, credit history, family size, outstanding debts, employment status, liquid assets, etc. Therefore, such criteria should be established in general terms by the State regulatory authority and is specific terms by the utility based on the economic and environmental conditions prevalent in the State and service area involved.

D. *Opportunity to Dispute.* (1) *Disputed and Undisputed Portions of Bills.* Some commenters wanted DOE to state that consumers do not have to pay that portion of a bill which is in dispute while the dispute is being processed.

DOE agrees with this position but emphasizes that the consumer is responsoble for paying those portions of a bill which are not in dispute if termination is to be avoided.

(2) *Written Decisions on Disputed Matters.* Som commenters objected to the expense involved in providing consumers with written decisions if a decision unfavorable to the consumer is reached. Other commenters recommended that all decisions be rendered in writing.

It is common business practice to communicate decisions regarding any dispute in writing. Therefore, DOE has revised the guideline to advise that all decisions be rendered in writing.

(3) *Regulatory Authority Dispute Procedures.* Some commenters questioned whether the dispute procedures applicable to a State regulatory authority were meant to apply also to the governing body of a nonregulated utility.

DOE is advising, in the guideline, that the governing body of the nonregulated utility resolve disputes which cannot be settled by the utility's staff in order to give consumers of nonregulated utilities protection comparable to that afforded consumers of regulated utilities.

(4) *Formal and Informal Complaint Procedures.* A commenter questioned whether DOE was only advocating formal hearings to resolve disputes at the regulatory authority level.

DOE recognizes that all disputes may not require a formal hearing and has modified the guideline to provide for informal complaint procedures if these would provide the consumer with an effective opportunity to dispute the reasons for termination.

E. *Protection During Health Emergencies.* (1) *Periods Especially Dangerous to Health.* Many commenters pointed out that the entire winter season is not a dangerous health period in all parts of the nation.

DOE agrees with this comment and has revised the guideline in this respect. A definition of "periods especially dangerous to health" is provided in the Definitions section. The definition allows substantial flexibility for the appropriate regulatory authority to make a determination of which periods are especially dangerous to health.

(2) *Postponement of Termination for Serious Illness.* Several commenters suggested that DOE not imply that postponement of termination for serious illness could be limited to a certain number of times since PURPA states that service should not be terminated during any period when termination would be especially dangerous to health and the consumer is unable to pay.

DOE has removed the reference to the number of times postponement would be granted for serious illness from the list of items that the State regulatory authority or nonregulated utility should establish in its policy regarding protection during health emergencies. However, the State regulatory authority or nonregulated utility should establish procedures for recertification (verifying continuation) of serious illness, where applicable.

F. *Elderly and Handicapped.* The comment was made that utility notification of the regulatory authority prior to terminating service to an elderly or handicapped consumer serves no purpose, since the guideline does not indicate what the authority should do with this knowledge.

DOE believes that the State regulatory authority or the governing body of the nonregulated utility should be notified when an elderly or handicapped consumer is scheduled for service termination. Certain individuals in these categories, especially if the sole member of the household, may need particular care at any time during the year, if service is terminated. The guideline has been amended to reflect DOE's intent that based on the information about imminent termination, the authority take whatever action it deems necessary. DOE recommends that the governing

body of the nonregulated utility be provided with this information in order that elderly and handicapped consumers served by a nonregulated utility be afforded protection comparable to that provided such consumers of regulated utilities. The State regulatory authority or governing body of the nonregulated utility need not handle each individual situation but might delegate that function to some responsible local public welfare or health agency for appropriate action. To permit such action to be taken in a timely manner, the guideline requires the utility to give the appropriate agency at least 48 hours notice prior to actual termination. This notice would be in addition to that provided to any other third party previously designated by the elderly or handicapped consumer.

G. *Other Comments.* Numerous comments were received suggesting additional topics DOE should address in this guideline. DOE did not incorporate all of these suggested changes because they were outside the scope of the guideline authority under PURPA which is to provide guidance on the PURPA standard without expanding the standard.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*))

Issued in Washington, D.C., on December 21, 1979.

Jerry L. Pfeffer,

Assistant Administrator for Utility Systems, Economic Regulatory Administration.

Appendix.—PURPA Guideline No. 1: Procedures for Termination of Electric Service and Gas Service

A. *Introduction.* This guideline provides general advisory assistance to State regulatory authorities and nonregulated utilities on the manner in which the Department of Energy (DOE) believes the termination of service standard should be implemented. It is recognized that implementation of this guideline may require changes in State laws or regulations under which such authorities and utilities now operate.

The purposes of this guideline are to suggest and discuss procedural matters pertinent to safeguarding consumer rights and remedies with respect to the termination of electric and gas utility service, and to further the basic objective of preventing serious illness or death when a consumer is unable to pay for service during any period when termination would be especially dangerous to health. If these results can best be achieved by means other than those set forth in this guideline, it might be appropriate to employ those means.

For the elderly, the handicapped, and the ailing, termination of electric and gas service can result in real risks to health. Accordingly, DOE believes (a) that electric and gas service should not be terminated, if a consumer is unable to pay, when termination would be especially dangerous to the health of the consumer or a resident in the consumer's household, (b) that the unique problems of elderly and handicapped consumers should receive special consideration before electric and gas service is terminated, and (c) that all consumers are entitled to reasonable prior notice and a reasonable opportunity to dispute the reasons for termination before service is terminated, except under emergency situations (storms, accidents, emergency repairs, etc.).

B. *Coverage.* This guideline covers the PURPA standards on Procedures for Termination of Electric Service and Procedures for Termination of Natural Gas Service. The gas and electric services provided by combination utilities should be separately considered when termination of service for nonpayment is involved.

C. *Definitions.* As used in this guideline, except as otherwise specifically provided—

"Appliances essential for maintenance of health" means any electric or gas energy-using device which is certified by a licensed physician as being essential to prevent (or provide relief from) serious illness or sustain the life of a member of the household and for which there is no reasonable alternative.

"Elderly" means any residential electric (gas) consumer, aged 62 or older, who resides at the service address.

"Electric consumer" means any person, State agency or Federal agency to which electric energy is sold other than for purposes of resale.

"Electric utility" means any person, State agency, or Federal agency, which sells electric energy.

"Gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

"Gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

"Handicapped" means any residential electric (gas) consumer who resides at the service address and has any physical or mental impairment which substantially limits one or more of such person's life activities, and such person (a) is certified as being physically disabled by a licensed physician, or (b) is certified as being mentally disabled by a licensed psychiatrist or registered psychologist, Veterans Administration, Social Security Administration, or local board of health.

"Nonregulated electric utility" means any electric utility other than a State regulated electric utility.

"Nonregulated gas utility" means any gas utility other than a State regulated gas utility.

"Periods especially dangerous to health" means (a) existing or anticipated prolonged periods of extreme environmental conditions which may adversely affect the health of a residential consumer or party residing at the consumer's address if service is terminated and also means (b) periods when a residential consumer or party residing at the consumer's address is likely to become seriously ill or more seriously ill if service is terminated. The State regulatory authority or nonregulated utility, as appropriate, will determine the periods of extreme weather conditions, within its jurisdiction, which are especially dangerous to health.

"State" means a State, the District of Columbia and Puerto Rico.

"State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

"State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy (natural gas) by any electric (gas) utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

D. *Organization and Content.* The guideline is organized around four major issues surrounding the termination of service standard:

1. Reasonable Prior Notice—What constitutes reasonable prior notice of termination?

2. Reasonable Opportunity to Dispute—What constitutes a reasonable opportunity to dispute the reasons for termination?

3. Protection During Health Emergencies—What provisions are reasonable to protect consumers who are unable to pay their bills or who are only able to pay in installments during a period when termination of service would be especially dangerous to health?

4. Reasonable Provisions for Elderly and Handicapped—What provisions should be made for elderly and handicaped consumers?

Each of these issues and important factors which must be taken into account when addressing them are discussed in turn.

1. Reasonable Prior Notice. Section 115(g)(1) and section 304(a)(1) of PURPA require that reasonable prior notice (including notice of rights and remedies) be given to electric consumers and gas consumers prior to termination. It is DOE's opinion that reasonable prior notice requires utilities to provide consumers in writing with both a statement of termination policy and a clear and informative notice of proposed termination.

(a) *Statement of termination policy.* A current general policy statement should be sent or delivered to all existing consumers and to all new consumers when they initiate service. Where a substantial percentage of a utility's residential consumers do not speak English, the statement should also be printed in an appropriate second language and distributed to the consumers. The general policy statement should include the following information in clear and understandable language:

(1) Grounds for termination,

(2) The time allowed to pay outstanding bills,

(3) Steps which must occur before service may be terminated for nonpayment,

(4) Steps necessary to have service reinstated,

(5) Instructions for residential consumers to designate the following:

(i) A third party (agency or individual) to receive a copy, by first class mail, of all termination notices;

(ii) Elderly or handicapped status of the consumer; and

(iii) Presence of appliances at the service address which are essential for maintenance of health of one or more of the residents;

(6) A notice of rights and remedies which should contain the following:

(i) The time allowed to initiate a complaint;

(ii) Appropriate administrative or other action to take in order to avoid termination;

(iii) Procedures to dispute and appeal the termination notice, including the office address and telephone number of the utility representatives available to handle inquiries or complaints;

(iv) Provisions relating to elderly and handicapped residential consumers and procedures for utilizing those provisions;

(v) A statement that elderly or handicapped residential consumers are responsible for notifying the utility of their status and that households which have appliances essential for health are responsibile for notifying the utility of such fact;

(vi) Provisions for residential consumers who are unable to pay their bills, and steps necessary to make a claim of inability to pay, as well as information on the availability of alternative payment arrangements;

(vii) Sources of financial assistance for residential consumers;

(viii) Procedures to dispute and appeal an unfavorable decision of the utility, including the address and telephone number of the appropriate regulatory authority's representatives available to handle complaints or inquiries; and

(ix) A statement that a consumer does not have to pay that portion of a bill which is in dispute while the dispute process is underway.

(b) *Notice of proposed termination.* The following general information should be included in all notices:

(1) Identification of consumer and service account affected by proposed termination,

(2) Statement of reason(s) for termination,

(3) Date on or after which proposed termination would occur,

(4) Reconnection fee schedule, if any, and

(5) Notice of rights and remedies (see 1(a)(6) above).

In cases where termination is based on failure to pay, each notice of termination should include the following additional information:

(6) Designation of the bill in question as actual or estimated, and

(7) Amount owed and time period over which amount was incurred.

Notices of proposed termination should be provided, in clear and understandable language, and in sufficient number and frequency to allow a consumer a reasonable opportunity to respond properly.

The first notice should be sent by first class mail at least 10 calendar days prior to the date after which termination could occur. If the utility receives no response, the second notice should be delivered by first class mail, or by personal contact with an adult on the premises (telephone or visit). First class mail is sufficient for nonresidential consumers. All notices should be provided to the account name and address and, if different, to the address where service is provided, as well as any other party previously designated by a residential consumer to receive a copy of a termination notice(s). As with the general statement of policy, the notice(s) should be provided to residential consumers in alternate languages where appropriate.

Tenants who pay for electric (gas) service as part of their rent (or as part of purchase payments) in master-metered buildings should be individually notified, when possible, of any proposed termination. In addition, tenants should be collectively notified by posting termination notice(s) in conspicuous locations such as near mailboxes, building entrances and exits, and other areas of common usage. In general, termination of service should not occur until after all affected tenants are advised of possible alternatives to termination such as (a) paying for continued service individually or collectively, and/or (b) other possibilities available in the jurisdiction involved.

2. Reasonable Opportunity to Dispute. Section 115(g)(1) and section 304(a)(1) of PURPA require that the consumer be given a reasonable opportunity to dispute the reasons for termination of service prior to termination. It is DOE's opinion that reasonable opportunity to dispute a notice of termination requires that prior notice be given in the manner defined above and that procedures for disputing the reasons for termination with the utility and before the State regulatory authority, governing body of the nonregulated utility, or a designated alternate agency, be clearly defined. DOE believes that service should not be terminated while the dispute is being processed in accordance with established procedures, provided any amounts not in dispute are paid when due.

(a) *Utility dispute procedures.* The steps required to file and process a complaint or dispute with the utility, and the procedures required to be adhered to by a utility in handling disputes should be clearly set forth in the rules and regulations of the State regulatory authority or the nonregulated utility. These procedures should include a requirement that the utility involved promptly render in writing to the consumer all decisions concerning a complaint or dispute.

(b) *State regulatory authority or governing body of nonregulated utility procedures.* Procedures should be adopted which provide that disputes which cannot be resolved by the utility and the consumer may be brought by either party to the State regulatory authority, governing body of the nonregulated utility, or a designated alternate agency for timely resolution. An indigent residential consumer should not be required to pay an advance filing fee.

The steps required to file and process a complaint or dispute with the State regulatory authority, governing body of

the nonregulated utility, or a designated alternate agency, and the procedures to be followed in hearing disputes between the utility and consumer should be set forth in clear and understandable language in the rules and procedures of the appropriate regulatory authority. These rules and procedures should include at least the following:

(1) Definition of right of representation,

(2) Definition of power of subpoena,

(3) Definition of right to present evidence and testimony, oral and written argument,

(4) Definition of right to confront witnesses,

(5) Location of burden of proof,

(6) Applicable rules of evidence,

(7) Possible methods of recording any proceeding,

(8) Identity of hearing office,

(9) Requirement of findings and decision, and

(10) Right of appeal.

These procedures should be designed to provide an effective opportunity for the consumer to present any opposition or alternatives to the proposed termination. Informal complaint procedures which would provide this opportunity may be substituted.

3. Protection During Health Emergencies. Section 115(g)(2) and section 304(a)(2) of PURPA provide that during any period when termination would be especially dangerous to health, as determined by the State regulatory authority or nonregulated utility, service may not be terminated if a consumer establishes inability to pay for service in accordance with the requirements of the utility's billing practices or the ability to pay only in installments.

To provide reasonable protection during periods dangerous to health, the State regulatory authority or nonregulated utility should define or establish the following:

(a) Periods when postponement of termination should be granted for those unable to pay;

(b) All steps required of a consumer asserting that he or a party residing at the consumer's address is likely to become seriously ill or more seriously ill if service is terminated, as well as procedures for recertification of serious illness, if applicable;

(c) All steps required of a consumer asserting inability to pay or ability to pay only in installments;

(d) All steps required of a utility in responding to assertions of inability to pay or ability to pay only in installments;

(e) Procedures for resolving disputes about assertions of inability to pay or of serious illness;

(f) Availability of installment plans which permit flexibility based on the amount of money owed, consumer's ability to pay, consumer's payment history, time that the debt has been outstanding, reasons why the debt has been outstanding, and any other relevant factors; and

(g) All steps required of a utility in the event a consumer does not meet the requirements of the agreed upon installment plan.

4. Reasonable Provisions for Elderly and Handicapped. According to section 115(g) and section 304(a) of PURPA, the procedures for termination of service shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

The specific provisions applicable to elderly and handicapped consumers should be set forth clearly within the State regulatory authority's rules and regulations or the nonregulated utility's policy governing termination of service and ought to apply throughout the year.

Elderly and handicapped consumers should be given at least two notices of proposed termination. The final notice should be made by personal contact with such a consumer or with another adult at the service address at least 48 hours (2 working days) prior to the date after which termination could occur. If personal contact cannot be made, the notice should be posed in a conspicuous location at the service address at least 48 hours (2 working days) prior to the date after which termination could occur.

Prior to terminating service to elderly or handicapped consumers, the utility should be required to notify the State regulatory authority, the governing body of the nonregulated utility, or an alternate agency designated by the appropriate regulatory authority, for any further action deemed necessary by that authority or agency. This notification should be received by that authority or agency at least 48 hours (2 working days) prior to the date after which termination could occur.

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Part XIII

Department of Energy

Economic Regulatory Administration

Mandatory Petroleum Price Regulations; Propane Increased Non-Product Costs

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-33]

Mandatory Petroleum Price Regulations; Propane Increased Non-Product Costs

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is adopting amendments to the Mandatory Petroleum Price Regulations to increase the non-product costs permitted to be passed through by refiners, resellers and retailers in the wholesale and retail selling prices of propane.

The major amendments adopted will:

(1) Increase to seven cents a gallon the cents-per-gallon passthrough of increased non-product costs permitted small retailers of propane,

(2) Increase the categories of increased non-product costs that may be passed through by resellers and retailers of propane,

(3) Increase to seven cents a gallon, the marketing costs permitted to be passed through by refiners in retail sales of propane,

(4) Provide an alternative marketing cost recovery method whereby refiners may elect to recoup all actual increased marketing costs in certain propane sales, and

(5) Remove refiner increased retail marketing costs from the scope of the equal application rule as it applies to propane.

DATE: Effective January 1, 1980.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. *Background*
II. *Summary of Comments*
III. *Amendments Adopted*
IV. *Regulatory Analysis*
V. *Other Matters*

I. Background

On June 29, 1979, the ERA issued a notice of proposed rulemaking (44 FR 40324, July 10, 1979) for the purpose of amending the Mandatory Petroleum Price Regulations regarding the wholesale and retail selling prices for propane.

Under the current Mandatory Petroleum Price Regulations resellers and retailers which have sales of propane, butane and natural gasoline of five million gallons or more per year must compute non-product cost increases for propane based on the actual costs incurred under specific cost categories which include labor; utilities; interest; Federal, State, and local taxes; maintenance; depreciation; and overhead. The proposed rulemaking indicated that consideration was being given to expanding the overhead cost category to include rent of personal property, bad debts, travel, meetings, dues, publications, commission agent fees, and adding a category which would permit the passthrough of increased salaries of equity owners.

Resellers and retailers which have sales of propane, butane and natural gasoline of less than five million gallons per year may compute propane increased non-product costs incurred under the cost categories specified for larger firms; or, as an alternative, claim a specified cents-per-gallon increment (up to three cents per gallon with respect to all retail sales of propane, except for sales to the petrochemicals industry, public utilities and to synthetic natural gas plants where up to one cent per gallon may be passed through.) The proposed rulemaking indicated that consideration was being given to increasing the allowable cents-per-gallon amounts of increased non-product costs permitted to be passed through by these small resellers and retailers. The proposal solicited comments on the appropriate level of non-product costs available for passthrough by propane marketers to permit such marketers to recover actual marketing costs incurred.

Refiners and gas processors engaged in the wholesale and retail marketing of propane are permitted justifiable price increases for non-product costs under cost categories similar to those permitted resellers and retailers with sales of five million gallons or more per year. Refiners of propane are permitted to recover a cents-per-gallon amount for marketing cost which is similar to that permitted small independent propane marketers. The proposed rulemaking indicated that consideration was being given to (a) raising the maximum amount of marketing costs permitted refiners, and (b) modifying the equal application rule to permit refiners to pass through all marketing costs otherwise permitted to be passed through in retail sales of propane without being deemed to have passed through equal amounts of marketing costs in wholesale sales of propane.

II. Summary of Comments

At a public hearing held on August 8, 1979, fifteen interested parties presented testimony on the issues proposed. In addition, twenty-four formal written comments regarding the outstanding proposed issues were received by the September 7 closing date. Comments were received from representatives of major refiners, mid-level marketers, propane retailers, various industry trade associations, state organizations, and other individuals.

The large majority of comments received were directed toward two issues, that is, the current cost levels and categories of non-product costs permitted to be passed through under the regulations, and the disparity in retail prices between refiners and independent propane marketers.

The large majority of the oral and written comments received concurred with the adoption of the proposed amendments to Subpart F applicable to retailers and resellers. The commenters generally indicated that an increase in the amount of non-product costs available for passthrough, as well as an expansion of the non-product cost categories, would tend to mitigate the financial hardships propane marketers claimed they were experiencing. No dissenting recommendations were received with respect to the proposed Subpart F amendments, with the exception of our alternate proposal to permit recovery of a fixed margin per gallon over cost of acquisition similar to that currently permitted gasoline retailers. Commenters felt that gasoline and propane retailing were dissimilar operations which would not lend themselves to similar regulatory provisions.

Many of the commenters indicated that a major problem is created by the way in which the refiner equal application rule may limit a refiner's recovery of increased marketing costs otherwise permitted under the regulations. Although the refiner price rules generally permit the passthrough of marketing costs in the amount of one-

half cent per gallon at the wholesale level and three cents per gallon at retail, the equal application rule, as applied to propane, prohibits the passthrough of unequal amounts of marketing costs to different classes of purchaser. Some refiners indicated that they had not been passing through the full three cents per gallon of allowable increased marketing costs at their retail outlets because the equal application rule would require them to absorb a two and one-half cent recovery on all gallons sold at the wholesale level when they recouped the three cents marketing cost on retail sales.

The independent marketers commented that this action by some major refiners, as well as the allowance of only three cents per gallon to reflect refiner retail marketing costs, has the effect of holding refiners' retail selling prices as much as ten cents a gallon below what an independent retailer must charge to remain financially viable. We received testimony that, as a result of the operation of these provisions, many independent marketers had terminated their operations or declared bankruptcy, thereby reducing the level of competition in the marketplace.

Those commenters felt that the equal application rule, as well as the retail marketing cost allowance permitted refiners, should be modified as follows:

(a) The cents-per-gallon marketing cost passthrough should be increased and marketing costs should be permitted to be assigned to the types of sales on which they were incurred.

(b) The equal application rule should be amended to permit unequal marketing costs to be assigned and passed through at each sales level, without the requirement of imputing recoveries based on the highest level of marketing costs passed through.

The final rule adopted today generally incorporates the above comments: The provisions will be discussed below in greater detail.

Those firms representing the petrochemical industry pointed out that the petrochemical industry utilizes propane primarily as a feedstock rather than a fuel and recommended that revisions be made to Section 212.83 to eliminate the disproportionate allocation of costs to petrochemical uses. We did not adopt such revisions because we believed that they were largely outside the scope of this rulemaking.

Although, as previously mentioned, all commenters were in favor of the adoption of the additional cost categories, some ancillary comments were made which we consider are worthy of mention. Some commenters recommended (1) that the categories of increased non-product costs include all costs recognized as business expenses for tax purposes; (2) that the categories of increased non-product costs be expanded to include all operational expenses incurred; and (3) that the permissible non-product cost passthrough be increased by an increment which would generate additional capital for equipment replacement or modernization.

All of these suggestions were considered, but were not adopted for the following reasons:

(1) We believe that the categories of non-product costs adopted place the independent propane retailers on a par with refiners and gas processors under Subparts E and K of our regulations. To revise the categories as suggested, in our opinion, could result in a larger disparity in prices between refiners and independent propane marketers. The resolution of this disparity was one of the purposes of this rulemaking.

(2) We do not believe that an additional incremental cents-per-gallon passthrough could be implemented by this rulemaking in order to generate additional working capital for equipment replacement or modernization in view of the fact that this issue was not proposed. We are considering raising this issue in a separate proposed rulemaking which may be issued in the near future.

Other ancillary comments from refiners and gas processors recommended that ERA take the following action:

(1) Amend Subpart K to permit gas processors to recover increased costs under categories similar to those adopted in Subpart F under this rulemaking.

(2) Permit marketing costs to be computed on a similar basis under Subparts F and K.

(3) Permits the fixed cents-per-gallon markup on retail sales to be adjusted automatically, on a semiannual basis, according to the GNP deflator.

(4) Permits refiners to calculate propane increased costs, other than marketing costs, on a regional basis.

While we consider that these matters were generally outside the scope of this rulemaking, we have determined that further consideration should be given to them. Accordingly, we may in the near future, institute a further rulemaking proceeding to consider such amendments to the price regulations.

III. Amendments Adopted

A. Increased Non-Product Cost Allowance on Retail Sales

We have decided, based on data, testimony, and comments provided during the conduct of this rulemaking, to increase by four cents per gallon the allowable amounts of increased non-product costs which may be passed through by propane retailers with sales of less than five million gallons of propane, butane, and natural gasoline per year. We do not intend to increase the cents-per-gallon increments contained in § 212.93(b)(4)(iii)(A) for retail sales to the petrochemical industry, public utilities, synthetic natural gas plants, or other sales, as no data was provided during the conduct of this rulemaking which would justify the passthrough of additional non-product cost increases on these types of sales beyond those currently allowed.

We have based the additional increment of four cents per gallon on the following data:

(1) A recent study conducted by the National LP Gas Association indicates that the average operating cost of propane marketers increased by 3.2 cents per gallon between December 31, 1974 and December 31, 1978. After adjustment of this amount to the current June 30, 1979 period, as well as consideration of those cost categories not included in the study, an additional 0.8 cents per gallon increment was deemed appropriate. This, we believe, supports the adoption of an additional four cents per gallon for increased non-product costs incurred by small propane marketers.

(2) A study conducted by the National LP Gas Association in 1975 indicated that the total average margin per gallon for LP gas marketers as of December 31, 1974 was 11.8 cents per gallon. Applying the 35.3 percent increase in the GNP deflator experienced between the end of the last quarter of 1974 and the end of the second quarter of 1979 to the total average operating margin of 11.8 cents per gallon, an increase of four cents per gallon would appear reasonable.

(3) All propane marketers which commented indicated that they had experienced increases in non-product costs of at least seven cents per gallon over May 1973 levels.

B. Non-Product Cost Categories

We have decided, based on data, surveys, testimony, and comments provided during the conduct of this rulemaking, to adopt, as proposed, the expansion of the overhead cost categories at § 212.93(b)(4)(iii)(B)(VII), as well as the addition of a new

category at § 212.93(b)(4)(iii)(B)(VIII), which would permit the passthrough of increased salaries to equity owners.

Based upon our reconsideration of the issue of permitting the passthrough of increased salaries to equity owners, we have made two changes to the proposal in this final rulemaking.

In the proposed rule we stated that "owner salaries will not be permitted as an allowable cost for any owner who did not draw a salary during May 1973 or the initial quarter of the firm's operations." Upon reconsideration, we believe that such a restriction would penalize the owner of a firm if, because of economic or other financial considerations, the owner did not draw a salary during these periods. Accordingly, the amendment we are adopting will permit the passthrough of that portion of an owner's current salary which equals the weighted average "percentage increase" in salaries granted to other employees of the firm since May 15, 1973 or the initial quarter of the firm's operations. Such salary is required to have been recorded on the books of the firm by May 1, 1979 to be available for passthrough. For example, if an owner were currently drawing a salary of $20,000 per annum which he began drawing January 1, 1979 and employees of the firm had been granted salary increases totaling 40 percent since May 15, 1973, $8,000 of the owner's salary could be passed through as an increased cost.

Although consideration was given to permitting total increased or newly established salaries to be passed through when an owner did not draw a salary during either May 1973, the initial quarter of the firm's operations or subsequent to May 1, 1979, these options were not selected because of concerns over possible discrimination against those owners who did draw salaries in May 1973, as well as possible abuses that might occur in the amount available for passthrough.

We have also adopted language to make clear that salaries of owners must be reasonable and bear a direct relationship to services performed in order to be eligible for passthrough. Owner salaries are not intended to represent or permit a reallocation of the net profits from operations to the "owner salary" category solely for the purpose of increasing the amount available for passthrough.

C. Refiners and Gas Processors

We have determined, based on data, surveys, testimony and comments, to increase from three to seven-cents per gallon the maximum allowable amount of marketing costs that may be passed through by refiners on all retail sales (except those to the petrochemical industry, to public utilities, and to synthetic natural gas plants). This action reflects the fact that refiner marketing costs have increased in similar proportion to the marketing costs of independent marketers, and thus will permit refiners to recover marketing costs which more accurately reflect the actual retail marketing costs incurred. This amendment increasing the amount of marketing costs that may be recovered in retail sales does not change the requirement that the amount passed through be cost-justified, that is, the amount passed through must reflect increased marketing costs actually incurred.

We are adding an alternative method by which refiners may recover marketing costs actually incurred in retail propane sales. Where a refiner has records which clearly identify marketing costs associated with particular retail sales (not including sales to the petrochemical industry, to public utilities, and to synthetic natural gas plants) that refiner may elect to recoup these costs directly in the sales from which they arise, rather than adding them to the marketing cost pool. Accordingly, a refiner may recoup marketing costs of more than seven cents per gallon in particular retail sales of propane, provided it can document the actual amount of marketing costs incurred in such transactions. We wish to make clear that a refiner which elects this alternative method of recovery, for a particular sale or sales may not bank any of the marketing costs associated with the transaction for which the election is made, and it may not otherwise pass through these marketing costs pursuant to other provisions of the price regulations.

We are giving refiners this additional flexibility of passing through actual costs in particular retail sales primarily to protect the competitive viability of independent retailers in markets where costs are unusually high. Unless this flexibility is given to refiners, the seven-cents-per-gallon limitation may hold refiners in their retail sales in those markets to levels that would force their independent competitors either to price at uneconomic levels or lose their market shares to integrated suppliers.

D. Equal Application Rule

As discussed above a substantial number of the commenters complained that the majority of their problems arose as a result of provisions of § 212.83(h) known as the equal application rule.

First, refiners indicated that in many cases they had not passed through the full three cents marketing cost increase permitted at the retail level because under provisions of the equal application rule they would be deemed to have recouped three cents on all sales of propane, including wholesale sales where only one-half cent per gallon of marketing cost increase may be passed through. In these circumstances the amount of increased cost available for banking would be reduced.

Independent marketers indicated that as a result of the equal application rule the prices charged by refiners were held at artificially low levels and independent marketers could not compete and remain financially viable. Our proposed rule contained an exception to the equal application rule for refiner sales of propane at the retail level in order to maintain healthy competition in the propane industry. Since the comments generally supported the proposal in this regard, we are amending the rule to provide that the equal application rule does not apply to marketing costs passed through at retail (except retail sales to the petrochemical industry, public utilities, and synthetic natural gas plants). This will permit refiners to pass through disproportionate amounts of increased marketing costs at retail without being deemed to have passed through the highest amount of increased marketing cost in all sales. Under the amendment a refiner may pass through marketing costs (other than in retail sales to petrochemical industry, public utilities and synthetic natural gas plants) unequally: (1) to classes of purchaser at different marketing levels (i.e., wholesale and retail), (2) among retail classes of purchaser, and (3) within retail classes of purchaser.

This exception to the equal application rule applies only to retail marketing cost calculated and passed through in accordance with the provisions of paragraph (VI) of the F_i factor of the refiner price rule, as amended today. We wish to point out that increased marketing costs passed through in violation of these provisions (for example, costs that exceed the seven cent ceiling or are not documented and applicable to specific transactions) would not fall within the exception to the equal application rule and would be deemed to have been passed through in all sales, pursuant to the provisions of the equal application rule.

Although we believe that this amendment adequately addresses the concerns of the commenters, we wish to make clear that these more flexible provisions of the equal application rule are not intended to sanction

discriminatory pricing practices towards any class of purchaser.

Some commenters also expressed concerns with regard to the equal application rule as it applies to sales of propane to the petrochemical industry. Although these contentions may have merit, we feel that any amendment to change this impact would require a specific proposal and more direct consideration than has been afforded by this rulemaking proceeding.

With respect to a contention by some commenters that an integrated refiner may pass through less costs to its own petrochemical subdivisions than it does to independent marketers, we believe that no further regulatory action is necessary as such practice, if it exists, is specifically prohibited by the provisions of Ruling 1974–27 dated December 19, 1974 (39 FR 44415).

IV. Regulatory Analysis

In accordance with Executive Order No. 12044, on Improving Government Regulation (43 FR 12661, March 24, 1978), DOE Order 2030.1, Procedures for the Development and Analysis of Regulations, Standards and Guidelines (44 FR 1032), January 3, 1979, and based on the comments and testimony received in conjunction with this proposal, we have prepared a final regulatory analysis which examines the estimated impact of the regulations adopted. Copies of this final regulatory analysis may be obtained from ERA's Office of Public Information, Room B–210, 2000 M Street, N.W., Washington, D.C.

The final regulatory analysis makes the following conclusions with respect to the economic impacts associated with the amendments adopted to Subparts E, F, and K of the Mandatory Petroleum Pricing Regulations:

Subpart E (Refiners)

We estimate that approximately 20 percent by volume of retail propane sold by refiners does not include the previous permissible three cents marketing cost passthrough in the final selling price due to the way some refiners interpreted the equal application rule. The amendment of 10 CFR 212.83(h)(2)(ii) to permit these refiners to pass through previous the maximum allowable marketing cost at the retail level will result in an expected economic impact of between $7 million and $10 million per annum.

We are also adding four cents per gallon to the previous three cents per gallon standard markup for refiners for recovery of marketing costs at the retail level. We estimate that this provision will result in a dollar impact of between $49 million and $63 million per annum.

Subpart K (Natural Gas Processing Facilities)

By allowing equity owner salaries to be passed through in product prices, with an estimated five percent of total U.S. propane production subject to this additional cost, it is estimated that the maximum impact per gallon will be 1.8 cents. We estimate that the total economic impact of this final rule will be between $5 million and $7 million per annum, assuming an average 41.3 percent salary increase over May 15, 1973 salaries for equity owners.

Subpart F (Reseller/Retailers)

Forty percent of all propane sales are by firms with less than $2 million in annual sales. We estimate that approximately 35 percent of the small independent propane reseller-retailers will compute actual non-product cost increases rather than use the cents-per-gallon markup which is permitted for firms with sales of less than five million gallons annually. For those resellers or retailers using the standard retail markup for propane non-product cost, we estimate that the total economic impact of this final rule will range between $63 million and $84 million per annum. For those resellers or retailers computing actual costs, we estimate that expanding the permissible cost categories will add approximately 1.3 cents per gallon to propane prices. The total impact would range between $59 million and $77 million per annum.

In conclusion, the total economic impact of these amendments is estimated as follows:

Applicable pricing section	Economic impact (millions)	
	High	Low
Subpart E	73	56
Subpart F	161	122
Subpart K	7	5
Total	241	183

When the range of the economic impact of this final rule is divided by the total of 18 million users of propane, the net impact per user would range between a maximum of $13.40 to a minimum of $10.15 per year.

VI. Other Matters

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (Pub. L. 95–91), the proposed rule was referred to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission indicated in a letter to the Secretary dated August 30, 1979 that the Commission had decided not to exercise its discretion to determine that the proposed rule significantly affects any function within the jurisdiction of the Commission. Accordingly, the Commission has not requested referral of this matter under the procedures of section 404 of the DOE Act.

After reviewing the final rule pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.)* DOE has determined that this rule does not constitute major Federal action significantly affecting the quality of the human environment and will not produce a measurable impact on the national environment.

Subsection (d)(1) of Section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.)* provides that the required publication of a rule be made at least 30 days before the effective date of the rule unless the rule relieves a restriction. Our action relieves price restrictions and therefore fits the exemption in section 553(d)(1).

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective January 1, 1980.

Issued in Washington, D.C., December 21, 1979.

Douglas G. Robinson,

Acting Administrator, Economic Regulatory Administration.

1. Subparagraph VI of the F_i^t factor in § 212.83(c)(2)(iii)(E) is amended to read as follows:

§ 212.83 Price rule.

* * * * *

(c) Allocation of increased costs.

* * * * *

(2) Formulae.

* * * * *

(iii) Definitions.

* * * * *

(E) The "N" factor.

* * * * *

F_i^t = * * *

(VI) (aa) Allows an increase in the price of propane, in sales after

December 31, 1979 above the prices otherwise permitted to be charged for propane pursuant to the provisions of this part by an amount not in excess of seven cents per gallon with respect to all retail sales except those to the petrochemicals industry, to public utilities and to synthetic natural gas plants; one cent per gallon with respect to retail sales to the petrochemical industry, to public utilities, and to natural gas plants and one-half cent per gallon with respect to all other sales; (bb) notwithstanding the provisions of subparagraph (aa) of this paragraph (VI), if a refiner has records which document the increased marketing costs actually incurred with respect to one or more particular retail sales of propane, except those to the petrochemicals industry, to public utilities, and to synthetic natural gas plants, such marketing costs may be recouped in such sales in lieu of the marketing costs that would otherwise be permitted by this paragraph, provided that such costs are not included in any calculations of increased costs made pursuant to any other provisions of this Part; and

* * * * *

2. Subparagraph (h)(2)(ii) of § 212.83 is amended to read as follows:

(h) *Equal application among classes of purchaser.*

* * * * *

(2) *Speical rules.*

* * * * *

(ii) *Propane.* (A) Notwithstanding the provisions of paragraph (h)(1) of this section, and subject to the provisions of paragraph (h) (2)(ii)(B) of this section, a refiner may apply unequal amounts of increased costs to the weighted average May 15, 1973, selling price of propane to classses of purchaser of propane, provided that the highest amount of increased cost applied to the weighted average May 15, 1973, selling price to any class of purchaser shall not exceed by more than 100 percent the amount of increased costs applied to the weighted average May 15, 1973, selling price of propane in sales to any class of purchaser that includes either an independent marketer, as defined in § 211.51 of this Chapter, or a purchaser that uses the product for residential use, as defined in § 211.51 of this Chapter, than is applied to the weighted average May 15, 1973, selling price of propane in sales to any other class of purchaser. (B) The provisions of paragraph (h)(1) of this section do not apply to increased marketing costs permitted to be applied to the weighted average May 15, 1973, selling price of propane in retail sales, except those to the petrochemicals industry, to public utilities, and to natural gas plants, pursuant to the provisions of paragraph (VI) of the F_1^t term of the N_i^t formulae of § 212.83(c)(2)(iii)(E), which specifies the limitations on propane marketing costs that may be charged to various purchasers.

* * * * *

3. In § 212.93, paragraphs (b)(4)(iii)(A) and (b)(4)(iii)(B)(VII) are revised; and paragraph (b)(4)(iii) (B)(VIII) is added to read as follows:

§ 212.93 Price rule.

* * * * *

(b) * * *

(4) * * *

(iii) *Maximum allowable amounts of increased nonproduct cost.* * * *

(A) Seven cents per gallon with respect to all retail sales of propane except those to the petrochemicals industry, to public utilities and to synthetic natural gas plants; one cent per gallon with respect to retail sales of propane to the petrochemicals industry, to public utilities and to synthetic natural gas plants; and one-half cent per gallon with respect to all other sales of propane.

(B)

* * * * *

(VII) *Overhead cost increase.*

Overhead cost increase is computed by applying the formula for "E_n^t" above. For purposes of this computation "C" is the dollar amount of costs of rent of real property, postage, office supplies, normal gas losses, insurance, employees' uniforms, outside legal and accounting fees, rent of personal property, bad debts, travel and meetings, dues and publications, commissison agent fees (based on volumetric payment) and transportation costs directly attributable to propane, butane, and natural gasoline sales operations and not included in the calculation of increased product cost, provided that such costs are computed according to generally accepted accounting practices and historically and consistently applied.

(VIII) *Equity-Owner Salaries Cost Increase.*

Cost increases relating to the equity-owner salaries are computed by applying the formula for E_n^t above. For purposes of this computation, "C" refers to the costs attributable to those salaries which are paid to personnel who own all, or any portion of, or receive profits from, the firm involved, who participate directly in the management or sales operations of the firm. A portion of an owner's current salary can be shown as an increased cost, up to the weighted average percentage increase in salaries granted to all other employees of the firm since May 15, 1973 or the initial quarter of the firm's operations, and to the extent that such salaries are reasonable and bear a direct relationship to services devoted to the firm's activities. Owner salary increases are prohibited as an allowable cost for any owner who did not draw a salary during May 1973, or the initial quarter of operations of the firm except where an owner has drawn a salary prior to May 1, 1979, but did not draw a salary during May 1973 or the initial quarter of the firm's operations because of economic or other financial considerations. In such a case, a portion of the owner's current salary can be shown as an increased cost, up to the weighted average percentage increase in salaries granted to all other employees of the firm since May 15, 1973 or the initial quarter of the firm's operations. The reallocation of "net profits" from operations to "owner salaries" for the sole purpose of increasing the costs available for pass through is not permitted.

* * * * *

4. In § 212.165, paragraphs (b)(2) (ii) and (v) are revised to read as follows:

§ 212.165 Increased processing costs.

* * * * *

(b) *Calculation of increased processing costs.* * * *

(2) *Allowable cost.* * * *

(ii) *Labor cost.* Labor cost is the total amount of direct and indirect remuneration or inducement for personal services which are reasonably subject to valuation for those personnel employed at a gas plant or directly involved in gas plant operations, including that portion of the costs of any contract with an unrelated entity attributable to personnel other than employees that perform such services. Costs in this category may include salaries paid to personnel who own all or any portion of, or receive profits from, the firm involved, for personal services that are wholly and specifically attributable to gas plant operations. Owner salary cost increases are limited to the weighted average percentage increase in salaries granted to all employees of the firm since May 15, 1973. Such salaries are not permitted as an allowable cost for any owner who did not draw a salary during May 1973 or the initial quarter of gas plant operations except where an owner has drawn a salary prior to May 1, 1979, but did not draw a salary during May 1973 or the initial quarter of the firm's operations because of economic or other financial considerations. In such a case a portion of the owner's current salary

can be shown as an increased cost, up to the weighted average percentage increase in salaries granted to all other employees of the firm since May 15, 1973 or the initial quarter of the firm's operations. Salaries of owners must be reasonable and bear a direct relationship to services devoted to the firm's gas plant activities. The reallocation of "net profits" from operations to "owner salaries" for the sole purpose of increasing the costs available for passthrough will not be permitted. For purposes of this paragraph (b)(2)(ii), an "unrelated entity" is an entity which is not part of the firm and which has no equity interest in any gas plant or plants (or in the natural gas liquids or natural gas liquid products produced therefrom) in which the firm has such an interest.

* * * * *

(v) *General and administrative costs.* General and administrative costs are the ordinary and necessary expenses of management and administration (including overhead) attributable to gas plant operations under generally accepted accounting principles historically and consistently applied by the firm, provided that any such costs which are attributable to, or incurred by, a corporate or other organizational administrative unit not directly and exclusively involved with gas plant operations shall not be an allowable cost. Costs in this category include legal and accounting fees, inter-plant gas transportation cost, and salaries paid to personnel who own all or any portion of, or receive profits from, the firm involved, for personal services that are wholly and specifically attributable to gas plant operations. Owner salary cost increases are limited to the weighted average percentage increase in salaries granted to all employees of the firm since May 15, 1973. Owner salaries are not permitted as an allowable cost for any owner who did not draw a salary during May 1973 or the initial quarter of gas plant operations, except where an owner has drawn a salary prior to May 1, 1979, but did not draw a salary during May 1973 or the initial quarter of the firm's operations because of economic or other financial considerations. In such a case a portion of the owner's current salary can be shown as an increased cost, up to the weighted average percentage increase in salaries granted to all other employees of the firm since May 15, 1973 or the initial quarter of the firms operations. Salaries of owners must be reasonable and bear a direct relationship to services devoted to the firm's activities. The reallocation of "net profits" from operations to "owner salaries" for the sole purpose of increasing the costs available for passthrough is not permitted.

* * * * *

5. In § 212.166 paragraph (b)(2)(i) is revised to read as follows:

§ 212.166 Increased marketing costs.

* * * * *

(b) *Calculation of increased marketing costs.* * * *

(2) *Allowable cost.* * * *

(i) *Labor cost.* Labor cost is the total dollar amount of direct and indirect remuneration or inducement for personal services, which are reasonably subject to valuation, for those personnel employed by the firm and directly involved in the sales operations of natural gas liquids and natural gas liquid products. This category includes salaries which are paid to personnel who own all, or any portion of, or receive profits from, the firm involved, for personal services that are wholly and specifically attributable to the firm's activities. Owner salary cost increases are limited to the weighted average percentage increase in salaries granted to all other employees of the firm since May 15, 1973. Such salaries are not permitted as an allowable cost for any owner who did not draw a salary during May 1973 or the initial quarter of the firm's operations except where an owner has drawn a salary prior to May 1, 1979, but did not draw a salary during May 1973 or the initial quarter of the firm's operations because of economic or other financial considerations. In such a case a portion of the owner's current salary can be shown as an increased cost, up to the weighted average percentage increase in salaries granted to all other employees of the firm since May 15, 1973 or the initial quarter of the firm's operations. Salaries of owners must be reasonable and bear a direct relationship to services devoted to the firm's activities. The reallocation of "net profits" from operations to "owner salaries" for the sole purpose of increasing the costs available for passthrough is not permitted.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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

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

REMINDERS

The items in this list were editorially compiled as an aid to **Federal Register** users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

FEDERAL HOME LOAN BANK BOARD

67089 11-23-79 / Loan in excess of 80 percent of value; Three-family and Four-family dwelling

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

67112 11-23-79 / Fee requirement for processing of medicated feed applications

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

67982 11-28-79 / Carpet cushion; minimum property standards

SECURITIES AND EXCHANGE COMMISSION

67107 11-23-79 / Information required in solicitation of proxies other than by the issuer

List of Public Laws

Last Listing December 26, 1979

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 3875 / Pub. L. 96-153 "Housing and Community Development Amendments of 1979". (Dec. 21, 1979; 93 Stat. 1101) Price $1.75

H.R. 5359 / Pub. L. 96-154 "Department of Defense Appropriation Act, 1980". (Dec. 21, 1979; 93 Stat. 1139) Price $1.50

S. 1874 / Pub. L. 96-155 To amend the Act incorporating the American Legion so as to redefine eligibility for membership therein. (Dec. 21, 1979; 93 Stat. 1165) Price $.75