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FRIDAY, JANUARY 14, 1977

highlights

PART I:

CONTINUED INSIDE

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

DOT/FAA—Airworthiness directives; Boeing 737 Series Airplanes..... 55860; 12–23–76

Justice—LEAA—Confidentiality of indentifiable research and statistical information..... 54846; 12–15–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

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

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

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

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Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202–523–5240.**

FEDERAL REGISTER, Daily Issue:

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"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235

PUBLIC LAWS:

Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

PART V:

CONFLICT OF INTEREST
DOT revises provisions on ethical conduct of employees; effective 1–14–77 3117

PART VI:

MINIMUM WAGES
Labor/ESA publishes general wage determination decisions for Federal and federally assisted construction.... 3131

contents

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

PROPOSED RULES:

442 ... 1267

3 CFR

EXECUTIVE ORDERS:

10480 (Amended by EO 11956) ... 2947
11490 (Amended by EO 11953) ... 2491
11651 (Amended by EO 11951) ... 1453
11724 (Superseded by EO 11954) ... 2297
11821 (Amended by EO 11949) ... 1017
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947

5 CFR

213 ... 1455, 2949
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665
910 ... 1476, 2977
928 ... 1, 2, 2665
959 ... 2308
971 ... 2666
1430 ... 3
1473 ... 2977
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308

PROPOSED RULES:

270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
730 ... 780
967 ... 2691
987 ... 2503
1063 ... 1356
1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1421 ... 2328
1434 ... 2980
1701 ... 1479
1473 ... 2977

9 CFR

73 ... 2949
97 ... 1455
113 ... 750, 1456

9 CFR—Continued

319 ... 751
381 ... 2949

PROPOSED RULES:

92 ... 1483

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
212 ... 1036, 1456, 2308

PROPOSED RULES:

212 ... 2646

12 CFR

4 ... 2950
16 ... 2200
202 ... 1242, 2950
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:

226 ... 780, 1268
505b ... 2503
523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:

112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
37 ... 19
39 ... 1217, 1218, 2053–2055
71 ... 300, 2055, 2056
73 ... 300
75 ... 300
97 ... 1219, 2056
221a ... 1220
241 ... 1219
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668

PROPOSED RULES:

39 ... 1268–1270
71 ... 1270–1271, 2078, 2079
152 ... 2850
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:

920 ... 2507

16 CFR

13 ... 3–5
1201 ... 1428

PROPOSED RULES:

1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
1301 ... 1484

17 CFR

1 ... 2628
200 ... 753
211 ... 2058
240 ... 753, 754, 2060
241 ... 759
276 ... 2953

PROPOSED RULES:

240 ... 781, 782
249 ... 782

18 CFR

2 ... 2954
11 ... 1276
141 ... 6
154 ... 2954
300 ... 2668

PROPOSED RULES:

1 ... 2079
2 ... 2329
3 ... 2079
154 ... 1272
157 ... 56

19 CFR

6 ... 2309
10 ... 2309, 2310
153 ... 2501

PROPOSED RULES:

1 ... 2329
113 ... 2330
201 ... 805

20 CFR

404 ... 2062
405 ... 1028
416 ... 2062
614 ... 1459

PROPOSED RULES:

416 ... 2079

21 CFR

2 ... 1459
4 ... 3108
8 ... 1459
102 ... 761
121 ... 1460, 1461
314 ... 1624, 1638, 3109
320 ... 1624, 1638
514 ... 3109

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*
1–741	Jan. 3
743–1015	4
1017–1194	5
1195–1450	6
1451–2049	7
2051–2291	10
2293–2497	11
2499–2664	12
2665–2946	13
2947–3157	14

presidential documents

Title 3—The President

Executive Order 11956 • January 13, 1977

Relating to Voluntary Agreements

By virtue of the authority vested in me by section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158) and section 301 of title 3 of the United States Code, and as President of the United States of America, section 501 of Executive Order No. 10480 of August 14, 1953, as amended, is amended to read as follows:

"Sec. 501 (a) The functions conferred upon the President by section 708 (c) (1) and (d) of the Defense Production Act, as amended, are hereby delegated to the Administrator of General Services and, subject to the provisions of section 101 of this order, to the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Transportation, except that for the purposes of carrying out the objectives of Title I of the Act, the authority granted in section 708 (c) (1) of the Act shall be exercised only by the Administrator of General Services.

"(b) The functions conferred upon the President by section 708 (d) of the Defense Production Act and delegated under section 501 (a) of this order, relating to the establishment of advisory committees, shall be exercised only after consultation with, and in accordance with guidelines and procedures established by, the Director of the Office of Management and Budget.".

Gerald R. Ford

THE WHITE HOUSE,
January 13, 1977.

[FR Doc.77-1490 Filed 1-13-77;11:35 am]

rules and regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Establishment of a New Temporary Schedule C

Part 213 is amended to add a new Temporary Schedule C authority to Subpart B to facilitate the orderly transition of duties as a consequence of a change in Presidential administration.

Effective on January 14, 1977, a new § 213.3302 is added as set out below:

§ 213.3302 Temporary Schedule C positions during a Presidential transition.

(a) An agency may establish temporary positions necessary to assist a department or agency head during the period immediately following a change in Presidential Administration. Such positions shall be either:

(1) Identical to an existing Schedule C position if intent to vacate that position has been stated by management or the present incumbent, such position to be designated as Identical Temporary Schedule C (ITC); or

(2) A new temporary Schedule C position, to be designated New Temporary Schedule C (NTC), when it is determined that the department or agency head's needs cannot be met through establishment of an Identical Schedule C position and a plan for use of such positions has been submitted to and approved by the Civil Service Commission.

(b) Service under this authority may not exceed 90 days. No new appointments may be made under the authority after May 1, 1977. These positions must be of a confidential or policy determining character, and are subject to instructions issued by the Civil Service Commission.

(5 U.S.C. secs. 3301, 3302.)

The Civil Service Commission has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

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

[FR Doc.77-1206 Filed 1-13-77;8:45 am]

Title 9—Animals and Animal Products

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

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

PART 73—SCABIES IN CATTLE

Areas Quarantined

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

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

In § 73.1a, in paragraph (a) relating to the State of Texas new paragraph (a) (3) relating to Potter County is added and a new paragraph (g) relating to the State of Colorado is added to read:

§ 73.1a Notice of quarantine.

(a) * * *

(3) The premises of Pest Consultants, Inc., comprised of Lot 691, sec. 164, Block 2 located at 7146 North Broadway, Amarillo, Potter County, Texas.

* * * * *

(g) Notice is hereby given that cattle in a certain portion of the State of Colorado are affected with scabies, a contagious, infectious, and communicable disease; and, therefore, the following area in such State is hereby quarantined because of said disease:

That portion of Weld County comprised of sec. 20, T. 1 N., R. 66 W.

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

Effective date: The foregoing amendments shall become effective January 10, 1977.

The amendments impose certain further restrictions necessary to prevent the interstate spread of cattle scabies and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 10th day of January 1977.

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

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

[FR Doc.77-1127 Filed 1-13-77;8:45 am]

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, MEAT AND POULTRY INSPECTION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Republication

Pursuant to 5 U.S.C. 552 and the authority contained in section 5(c) of the Poultry Products Inspection Act, § 381.221 of 9 CFR Chapter III is hereby republished.

The purpose of this republication of § 381.221 is to combine the numerous amendments which have been made to the section since it was published May 16, 1972 (37 FR 9706). The republication is editorial in nature and is done as a matter of reader convenience in conjunction with the next revised edition of Title 9 of the Code of Federal Regulations. No changes are made in § 381.221 at this time.

Section 381.221, combining the numerous amendments made thereto since May 16, 1972, reads as follows:

§ 381.221 Designation of States under paragraph 5(c) of the Act.

Each of the following States has been designated, under paragraph 5(c) of the

Act, as a State in which the provisions of sections 1 through 4, 6 through 10, and 12 through 22 of the Act shall apply to operations and transactions wholly within the State. The Federal provisions apply, effective on the dates shown below:

States	*Effective date of application of Federal provisions*
Arkansas	Jan. 2, 1971.
California	Apr. 1, 1976.
Colorado	Jan. 2, 1971.
Connecticut	Oct. 1, 1975.
Georgia	Jan. 2, 1971.
Guam	Jan. 21, 1972.
Idaho	Jan. 2, 1971.
Kentucky	July 28, 1971.
Maine	Jan. 2, 1971.
Massachusetts	Jan. 12, 1976.
Michigan	Jan. 2, 1971.
Minnesota	Do.
Missouri	Aug. 18, 1972.
Montana	Jan. 2, 1971.
Nebraska	July 28, 1971.
Nevada	July 1, 1973.
New Jersey	Do.
North Dakota	Jan. 2, 1971.
Oregon	Do.
Pennsylvania	Oct. 31, 1971.
Puerto Rico	Jan. 17, 1972.
South Dakota	Jan. 2, 1971.
Tennessee	Oct. 1, 1975.
Utah	Jan. 2, 1971.
Virgin Islands	Nov. 27, 1971.
Washington	June 1, 1973.
West Virginia	Jan. 2, 1971.

Done at Washington, D.C., on January 7, 1977.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.77-1238 Filed 1-13-77;8:45 am]

Title 12—Banks and Banking

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

PART 4—DESCRIPTION OF OFFICE PROCEDURES, PUBLIC INFORMATION

Request for Records; Designated Officer

This amendment is issued under authority of the National Bank Act, 12 U.S.C. 1, *et seq.*, pursuant to the requirement of 5 U.S.C. 552 that each agency publish in the FEDERAL REGISTER the methods by which, and the employees from whom, the public may obtain information.

The purpose of this amendment is to update the procedures by which the public may request information so as to conform those procedures to recent organizational changes within the Office. Specifically, the amendment designates the Director for Communications as the agency official responsible for those duties previously performed by the Special Assistant for Public Affairs.

The Administrative Procedure Act does not require public procedures and delayed effectiveness in connection with rules of agency organization, procedure or practice. The amendment will therefore become effective upon publication in the FEDERAL REGISTER.

12 CFR Part 4 is amended by amending § 4.17 as follows:

Sections 4.17 (b) (1) (i), (d) (2), (d) (2) (i) and (e) (1) are amended by deleting the words "Special Assistant for Public Affairs" and adding in their place the words "Director for Communications".

Effective date: This amendment is effective on January 14, 1977.

Dated: January 10, 1977.

ROBERT BLOOM,
Acting Comptroller of the Currency.

[FR Doc.77-1253 Filed 1-13-77;8:45 am]

[Docket No. R-0076]

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

CONSUMER PROTECTION AND AUTHORITY DELEGATION

Miscellaneous Amendments

The Boad of Governors of the Federal Reserve System has adopted various amendments to its Regulations B, Z and AA, and to its Rules Regarding Delegation of Authority (12 CFR Parts 202, 226, 227 and 265, respectively), pursuant to its authority under sections 105 and 703 (a) of the Consumer Credit Protection Act (15 U.S.C. 1604 and 1691b(a)), section 18(f) of the Federal Trade Commission Act as amended (15 U.S.C. 57a (f)), and section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)).

The amendments delegate authority to issue certain examination, inspection and reporting materials to the Board's Division of Banking Supervision and Regulations and Division of Consumer Affairs. The amendments also reflect the transfer of the Securities Credit Regulation section from the latter division to the former.

The Office of Saver and Consumer Affairs has recently been redesignated as the Division of Consumer Affairs. The affected regulations are amended to reflect this redesignation.

Finally, the amendments make a number of other conforming, stylistic and technical changes in the affected regulations.

The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date are not followed in connection with the adoption of these amendments because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirements of such section. The amendments are effective immediately.

PART 202—EQUAL CREDIT OPPORTUNITY

1. Section 202.13(c) (1) and (3) are amended as follows:

§ 202.13 Penalties and liabilities.

* * * * *

(c) (1) Any request for formal Board interpretation or official staff interpretation of Regulation B must be addressed to the Director of the Division of Consumer Affairs, * * *

* * * * *

(3) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs * * *

* * * * *

PART 226—TRUTH IN LENDING

2. Section 226.1(d) (1) and (3) are amended as follows:

§ 226.1 Authority, scope, purpose, etc.

* * * * *

(d) (1) Any request for formal Board interpretation or official staff interpretation of Regulation Z must be addressed to the Director of the Division of Consumer Affairs, * * *

* * * * *

(3) Pursuant to section 130(f) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs * * *

* * * * *

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

3. Section 227.2(a) (2) (i) is amended as follows:

§ 227.2 Consumer complaint procedure.

(a) *Submission of complaints.* * * *

(2) Consumer complaints should be made to:

(i) The Director, Division of Consumer Affairs, * * *

* * * * *

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

4. Section 265.2 is amended by adding new paragraphs (c) (19), (20), (21) and (22), and by deleting paragraphs (h) (1)–(3), revising paragraphs (h) (4) and (6), and redesignating paragraphs (h) (4), (5), and (6) as paragraphs (h) (1), (2) and (3) respectively. As amended § 265.2(c) and (h) read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) The Director of the Division of Banking Supervision and Regulation (or in the Director's absence, the Acting Director) is authorized:

* * * * *

(19) Under the provisions of §§ 207.2 (f), 220.2(e), and 221.3(d) of this chapter (Regulations G, T, and U, respectively) to approve issuance of the list of OTC margin stocks and to add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest.

(20) Under the provisions of § 207.4 (a) (2) (ii) of this chapter (Regulation G) to approve repayments of the "deficiency" with respect to stock option or employee stock purchase plan credit in lower amounts and over longer periods of time than those specified in the regulation.

(21) Pursuant to the provisions of Part 261 of this chapter, to make avail-

able reports and other information of the Board acquired pursuant to Parts 207, 220, 221, and 224 (Regulations G, T, U and X) of the nature and in circumstances described in § 261.6(a) (2) and (3) of Part 261.

(22) Pursuant to the provisions of section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)) and sections 17(c), 17(g), and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q(c), 78q(g), and 78w) to issue examination or inspection manuals, registration, report, agreement, and examination forms, guidelines, instructions or other similar materials for use in connection with the administration of sections 7, 8, 15B and 17A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78g, 78h, 78o-4, and 78q-1).

* * * * *

(h) The Director of the Division of Consumer Affairs (or, in the Director's absence, the Acting Director) is authorized:

(1) Pursuant to the provisions of section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), sections 108(b), 621(c), and 704(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(c) and 1691c(b)), section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)), section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), and section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)), to issue examination or inspection manuals, report, agreement, and examination forms, guidelines, instructions or other similar materials for use in connection with

(i) Sections 1 through 709 (excluding sections 201 through 500) of the Consumer Credit Protection Act (15 U.S.C. 1601-1691f),

(ii) Sections 301 through 310 of the Home Mortgage Disclosure Act (12 U.S.C. 2801-2809),

(iii) Sections 18(f)(1)-(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)-(3)), and

(iv) Section 805 of the Civil Rights Act of 1968 (42 U.S.C. 3605); and rules and regulations issued thereunder.

* * * * *

(3) Pursuant to section 703(b) of the Consumer Credit Protection Act (15 U.S.C. 1691b(b)), to call meetings of and consult with the Consumer Advisory Council established under that section, to approve the agenda for such meetings, and to accept any resignation from Consumer Advisory Council members.

By order of the Board of Governors, December 29, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-1217 Filed 1-13-77;8:45 am]

[Reg. L; Docket No. R-0059]

PART 212—INTERLOCKING BANK RELATIONSHIPS UNDER THE CLAYTON ACT

Relationships Permitted by Board

On October 20, 1976 the Board of Governors of the Federal Reserve System invited public comment on a proposed amendment to Regulation L (Interlocking Bank Relationships Under the Clayton Act) to permit, with certain prescribed limitations, a director, officer, or employee of a member bank to serve simultaneously as a director, officer, or employee of a minority bank (41 FR 46352). After consideration of the comments submitted the Board has determined to adopt the proposed amendment in slightly modified form.

Interlocking relationships between member banks and other banks in the same city, town, or village are generally prohibited by section 8 of the Clayton Act (15 U.S.C. 19). The statute provides that the Board of Governors may by regulation permit interlocking relationships between a member bank and another institution. Pursuant to this authority, by regulation the Board previously has permitted a director, officer, or employee of a member bank to serve as a director, officer, or employee of a Morris Plan bank, a bank in a low income area, or a bank that is actively considered for merger or consolidation with the member bank.

The Board is aware that minority banks are often in need of managerial or operating expertise in order to continue to develop and to serve their communities in an effective fashion. Additional managerial and operating expertise would be procompetitive in that it would result in stronger minority banks. Many directors, officers, and employees of other banks in a particular geographic area are willing to provide such assistance to the minority banks. However, such assistance is generally prohibited by the restrictions of the Clayton Act. Consequently, the Board has determined that public benefits would result if, pursuant to the Board's authority, such interlocking relationships were permitted. The Board believes that the amendment is consistent with the purposes of section 8 of the Clayton Act.

Under the terms of the proposed amendment, a bank would have qualified as a minority bank if it was at least 50 percent owned, controlled, or managed by persons who are members of minority groups by virtue of their race, religion, color, national origin, or sex. Upon review of the original proposal and the comments received from the public, the Board has determined that reference to a specific percentage of ownership or to specific attributes that must be present in order to qualify for minority status are unnecessary in order to accomplish the objectives of the amendment. Reference to ownership by minorities was not incorporated in the amendment adopted by the Board because, in the Board's view, the requirement of control by persons who are members of minority groups would include banks that are owned by such persons.

The Board is also aware that in recent years a number of banks have been chartered by women. In order to provide management or operating assistance to banks controlled or managed by women, the amendment adopted by the Board specifically refers to banks controlled or managed by women as qualifying under the exception. This represents a slight modification of the amendment as originally proposed by the Board which referred indirectly to banks owned, controlled, or managed by women.

The amendment is intended to provide management and operating assistance to banks that are controlled or managed by women or by persons that are members of minority groups that are underrepresented at various levels of the banking industry.

Pursuant to its authority under 15 U.S.C. 19, effective immediately, the Board of Governors amends § 212.3 of Regulation L (12 CFR 212.3) by adding a new paragraph (h) to read as follows:

§ 212.3 Relationships permitted by Board.

In addition to any relationships covered by the foregoing exceptions, not more than one of the following relationships is hereby permitted [*] by the Board of Governors of the Federal Reserve System in the case of any one individual.

* * * * *

(h) *Minority Bank.* Any director, officer, or employee of a member bank of the Federal Reserve System may be at the same time a director, officer, or employee of not more than one other bank that is controlled or managed by persons who are members of minority groups or by women subject to the following conditions: (1) Such relationship is determined by the Board to be necessary to provide management or operating expertise to such other bank; (2) not more than three interlocking relationships between any two banks shall be permitted by this paragraph, except that persons serving in interlocking relationships pursuant to this paragraph shall in no instance constitute a majority of the board of directors of the other bank; (3) no interlocking relationship permitted by this paragraph shall continue for more than a five-year period; and (4) upon such other terms and conditions in addition to or in lieu of the foregoing, as may be determined by the Board in any specific case.

* * * * *

Board of Governors of the Federal Reserve System, January 4, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-1223 Filed 1-13-77;8:45 am]

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Acquisition of Shares; Correction

In FR Doc. 77-453 appearing at page 1263 of the issue for January 6, 1977, the

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[*] * * *

interpretation should be numbered 225.137.

Board of Governors of Federal Reserve System, January 7, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-1201 Filed 1-13-77;8:45 am]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

[No. 77-10]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

PART 570—BOARD RULINGS

Pension Plans and Service Corporations

JANUARY 5, 1977.

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

I. EXISTING BOARD RULING

In effect since 1959, Board Ruling 570.2 provided guidelines within which associations' employee pension plans would be considered unobjectionable from the standpoint of supervisory interests and responsibilities.

II. PROPOSED REGULATION

New § 563.40 was proposed to replace the old Board Ruling with updated regulations reflecting major statutory changes in pension plan law. As proposed, new § 563.40 would have differed from Board Ruling 570.2 by:

a. Including employee pension plans of service corporations;

b. Allowing funding methods described under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1954 (IRC) as thereby amended, although amortization of past service cost would have been limited to 10 years, except for insurance contract plans;

c. Permitting cost-of-living amendments to plans under certain conditions;

d. Requiring contingent liability coverage for plan termination when available;

e. Deleting the requirement that pension obligation automatically terminate upon an association's default and adding a requirement of 60-day notice to FSLIC upon anticipation of a plan's termination; and

f. Including a reporting and recordkeeping requirement for pension plans not subject to ERISA and IRC.

III. FINAL REGULATIONS

As adopted by this Resolution, the new regulation has been designated § 563.39–1 (regulation number 563.40 having been previously used). New § 563.39–1 retains those features, described above, but modifies or revises them as follows:

a. Funding methods—amortization periods under ERISA and IRC are allowed;

b. Cost-of-living amendment—now requires board of directors' analysis of anticipated charges to net income for future periods;

c. Contingent liability coverage—reserved;

d. Records—omits the requirement of actuarial opinions for defined contribution plans and requires opinions for other plans by an "enrolled actuary" as described by ERISA.

The Federal Home Loan Bank Board, by Resolution No. 76-474, dated June 30, 1976, proposed to revoke its ruling set forth in § 570.2 of the Rules and Regulations for Insurance of Accounts (12 CFR 570.2) and to amend Part 563 of said Rules and Regulations (12 CFR Part 563) by adding thereto a new § 563.40 for the purpose of updating Board regulations to conform to the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended. Notice of such proposed rulemaking was published in the FEDERAL REGISTER on July 7, 1976 (41 FR 27852), with an invitation to interested persons to submit written comments by August 9, 1976. On the basis of its consideration of all relevant material presented by interested persons and otherwise available, the Board hereby adopts this proposal with modifications as discussed below, but with the new regulation designated § 563.39–1 (regulation number 563.40 having been previously used).

Proposed § 563.39–1(a) required that pension plan costs incurred by an association or its service corporation be reasonable and that the prospective liability of such employer or plan sponsor to the plan participants be determinable from the plan.

As hereby adopted, § 563.39–1(a) incorporates three modifications. First, clarification is made that the regulations apply only to pension plans sponsored by an association or service corporation for the benefit of its employees, as distinguished from other plans which associations may offer to the general public, such as Keoghs and IRAs. Second, since the proposal lacked definition of employee pension plans, § 563.39–1(a) now incorporates by reference the definition in Section 3(2) of ERISA. Third, distinction is made between defined contribution and defined benefit plans to include a provision for an actuarial estimate of future experience under defined benefit plans.

One modification has been made to § 563.39–1(b), which established that plan funding could be determined by any actuarial cost method permitted under ERISA and the IRC but limited amortization of past service cost to 10 plan years for all but insurance contract plans. As hereby adopted, § 563.39–1 (b) deletes this 10-year amortization requirement in accordance with the Board's opinion that, on balance, the time periods under ERISA and IRC provisions will provide greater flexibility in plan management while being consistent with safe and sound operations.

Section 563.39–1(c), which permits plan amendments for cost-of-living increases to retired plan participants, has been changed in subparagraph (c)(2) to require that the responsible board of directors analyze anticipated charges to net income for future periods before granting an increase in benefits. Since such increase may result in greater past service cost liability and higher funding, the Board emphasizes the need for well-considered management judgments in granting increases.

The proposal included, in § 563.39–1 (e), a requirement for contingent liability coverage for losses arising from plan termination should a plan's liabilities then exceed plan assets. This provision is being reserved until such time as the Board determines the type and extent of coverage which would most effectively provide protection for plan sponsors and the Federal Savings and Loan Insurance Corporation.

Finally, the recordkeeping requirement of § 563.39–1 (f) contains two revisions. The actuarial opinion required by paragraph (f)(5) has been deleted for defined contribution plans, since such opinion generally would be inapplicable to those plans. Also, in order to assure that persons rendering such opinions are properly qualified, clarification has been made that such actuary must qualify as an "enrolled actuary" under ERISA.

Accordingly, the Board hereby revokes Board Ruling 570.2 of the Rules and Regulations for Insurance of Accounts, and amends § 563 thereof to add new § 563.39–1, to read as set forth below, effective February 14, 1977.

1. Add new § 563.39–1 to read as follows:

§ 563.39–1 Pension plans.

(a) *General.* No insured institution or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: *Provided*, That (1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and (2) No increase shall be granted unless (i) anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and (ii) the increase will not reduce the institution's

net worth below the level required by § 563.13(b) of this Part.

(d) *Termination.* The plan shall permit the sponsor's board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the Corporation at least 60 days prior to the proposed termination date.

(e) *Contingent liability coverage.* [Reserved]

(f) *Records.* Each insured institution or service corporation maintaining a plan not subject to recordkeeping and reporting requirements of the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the following:

(1) Plan description;

(2) Schedule of participants and beneficiaries;

(3) Schedule of participants' and beneficiaries' rights and obligations;

(4) Plan's financial statements; and

(5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan's experience and expectations, and represent the actuary's best estimate of the plan's projected experiences.

§ 570.2 [Revoked]

2. Revoke § 570.2.

(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. 1071.)

Effective date: February 14, 1977.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77-1287 Filed 1-13-77;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-563]

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Applicability of Investment Advisers Act to Certain Publications

The Securities and Exchange Commission today announced that the staff has reconsidered its past interpretations regarding the applicability of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) (the "Act") to certain publications. Section 202(a)(11) of the Act (15 U.S.C. 80b-2(a)(11)) provides:

"Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. * * *

In interpreting this language, the staff has for many years taken the position that publication of a single book, pamphlet, or article of an investment advisory nature would not normally require an author or publisher [1] to register as an investment adviser where (1) the publication did not contain recommendations, reports, analyses, or other advisory information relating to specific securities or issuers, (2) the publication was not one of a series of publications or intended to be supplemented or updated, and (3) the publication did not contain one or more investment formulae, or for other reasons appear likely to be sold or used continuously and indefinitely, *provided*, That the author or publisher did not engage in any other activities which would bring him within the definition of investment adviser.[2] Under these circumstances, it is doubtful that a publisher or author is engaged in an investment advisory "business" within the meaning of section 202(a)(11) or that substantial benefits to investors would result from requiring registration.

Upon reconsideration of its past positions, the staff has concluded that registration under the Act should not be required solely because a publication contains one or more formulae or guidelines intended to be used by investors in making determinations as to what securities to buy or sell or when to buy or sell them. From an administrative standpoint, difficulties have arisen in distinguishing between essentially mechanical formulae or guidelines, and those more general investment philosophies, techniques or analytical approaches for which registration under the Act has not normally been required in the absence of other factors.[3] Also, the staff believes that, even as to publications within the former category, the benefits to investors from registration under the Act of an author or publisher may be slight. For example, "scalping" or similar fraudulent and manipulative practices would not present a real danger.[4]

The staff has concluded, therefore, that the definition of investment adviser should not be construed to include the author or publisher of any book, pamphlet, or article (1) which does not contain recommendations, reports, analyses, or other advisory information relating to specific securities or issuers [5] and (2) which is not one of a series of publications by such person or intended to be supplemented or updated, *provided*, That the author or publisher has not and does not intend to engage in any other activities which would bring him within the definition of investment adviser.

Consequently, under these circumstances, the staff will no longer take the position that registration pursuant to section 203 (15 U.S.C. 80b-3) of the Act is required.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 10, 1977.

[FR Doc.77-1308 Filed 1-13-77;8:45 am]

[1] The definition of "investment adviser" encompasses publishers as well as authors. Section 202(a)(11)(D) (15 U.S.C. 80b-2(a)(11)(D)), however, excepts from the definition of investment adviser "* * * the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation. * * *" This exception is applicable only where, based on the content, advertising material, readership, and other relevant factors, a publication is not primarily a vehicle for distributing investment advice. (See *SEC v. Wall Street Transcript Corp.*, 442 F. 2d 1371 (2d Cir. 1970), cert. denied, 398 U.S. 958 (1970).)

[2] See Phoenix Publishing (SEC staff letter, publication available August 2, 1974); Bernard Katz (SEC staff letter, publication available April 25, 1973). The most recent staff letters have simply stated that registration is required for any author or publisher who writes or publishes regularly about securities or who writes or publishes books, pamphlets or magazines which contain formulae which are intended to be used by readers in making determinations as to which securities to buy or sell, regardless of whether or not recommendations with respect to specific securities are made. See Torrey H. Smith (SEC staff letter, publication available January 22, 1976), Meditech Venter Management, Inc.,)SEC staff letter, publication available March 15, 1975); Lawrence R. Ross (SEC staff letter, publication available February 7, 1975); and Hugh D. Bailey, Jr. (SEC staff letter, publication available January 3, 1975).

[3] The staff has generally resolved such questions, where necessary, on a case-by-case basis, by taking into account, among other things, the degree of specificity with which a publication could be used to identify securities for purchase or sale, and the extent to which a publication appeared to lend itself to continuous or indefinite use. Also, the staff has not normally asserted that the publisher (as contrasted with the author) of an occasional isolated book, pamphlet or article which might recommend specific securities or contain one or more investment formulae would be required to register under the Act if the publisher engaged in no other investment advisory activities. Rather, it would generally appear more appropriate to require registration as an investment adviser only for publishers who publish such materials on a more regular basis, or who also engage in other activities which would bring them within the definition of investment adviser. See Phoenix Publishing, supra.

[4] See *SEC v. Capital Gains Research Bureau, Inc.*, 373 U.S. 180 (1963).

[5] Some publications discuss specific securities or issuers solely to illustrate a general proposition or analytical technique. This would not, in itself, require registration under the Act if, under all the facts and circumstances, such references are not particularly intended or likely to be used by readers to determine whether to purchase or sell the specific security referred to, as opposed to any other security. On the other hand, there may be publications which do not mention the name of a particular issuer or security, but refer only, for example, to an industry or class. Where the industry or class is very small, or for other reasons the issuer or security referred to is readily identifiable, registration could not be avoided merely because the issuer or security is not specifically identified.

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM75-14; Opinion 770-A]

PART 2—GENERAL POLICY AND INTERPRETATIONS

PART 154—RATE SCHEDULES AND TARIFFS

National Rates for Jurisdictional Sales of Natural Gas; Opinion and Order on Rehearing; Correction

JANUARY 10, 1977.

In the matter of national rates for jurisdictional sales of natural gas dedicated to interstate commerce on or after January 1, 1973, for the period January 1, 1975, to December 31, 1976 (Opinion No. 770-A), opinion and order on rehearing modifying in part Opinion No. 770 and granting petitions for intervention, issued November 5, 1976.

Opinion 770-A was published in the FEDERAL REGISTER, Vol. 41, No. 221, beginning at page 50199, on November 15, 1976. The following changes should be made in the document as published in the FEDERAL REGISTER.

1. The following should replace § 2.56a (a)(5), first column, on page 50231 of Opinion No. 770(A):

(5) Sales of natural gas in interstate commerce for resale may be made at a rate of 52 cents per Mcf (at 14.73 psia), exclusive of all State or Federal production, severance or similar taxes, and subject to the adjustments provided in this § 2.56a, and the escalation provided in paragraph (a)(6), provided the sale is made pursuant to (i) a replacement contract where the sale was formerly made pursuant to a permanent certificate of unlimited duration under such prior contract which expired by its own term on or after January 1, 1973, or pursuant to a contract executed on or after January 1, 1973, where the prior contract expired by its own terms prior to January 1, 1973; or (ii) contracts for sale of natural gas in interstate commerce for gas from wells commenced prior to January 1, 1973, and not previously sold in interstate commerce prior to January 1, 1973, except pursuant to the provisions of §§ 2.68, 2.70, 157.22 or 157.29 (including sales made pursuant to those sections as modified by Federal Power Commission Order No. 491 et al.); or (iii) a completion operation into a different formerly nonproductive reservoir commenced on or after January 1, 1973, in a well commenced (spudded) prior to January 1, 1973.

2. On page 50227, 9th paragraph of section I, Refund Requirements, 8th line, change "CFR 2.56a (a) (5)" to "CFR 2.56a (a) (3)," and add: "and are limited to 130% of the rates prescribed in 18 CFR 2.56a (a) (5)."

3. On page 50227, 8th and 9th paragraphs of Section I, Refund Requirements, third lines, delete: "(plus 1¢ per annum escalation)."

4. On page 50233, paragraph (C), lines 18 and 19 should read: "to pipeline increases filed pursuant thereto; *provided further*, the special rate increase may also include qualifying small producer increases. In addition, such pipeline may file a * * *".

The following changes refer to Commissioner Smith's statement, concurring in part and dissenting in part, which was issued with Opinion No. 770-A, but not published in the FEDERAL REGISTER.

1. On page 8, section B, first paragraph, at the beginning of the third line, delete the word "at".

2. On page 19, second paragraph, lines 15 and 16 should read: "from flowing gas to prospective incentive increments for new gas, the majority has increased the probability of * * *".

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1283 Filed 1-13-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

[Docket No. R-76-407]

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

Correction

On January 4, 1977 (42 FR 762), the Department published a final Rule in the above-styled proceeding. However, the publication inadvertently omitted certain dates which this correction provides.

Accordingly, §§ 207.26a, 213.34a, 221.548a, and 231.10c of Title 24 are each corrected by including the date March 4, 1977 in the blank space appearing at lines 2-3 of the opening paragraph.

(Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d).)

Issued at Washington, D.C., January 6, 1977.

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

[FR Doc.77-1258 Filed 1-13-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7450]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Questions and Answers Relating to Exclusion of Certain Disability Income Payments; Correction

On Wednesday, December 29, 1976, Treasury Decision 7450 was published in the FEDERAL REGISTER (41 FR 56630). The following correction is made to this Treasury decision:

Immediately following the heading of § 7.105-1 that reads "Questions and answers relating to exclusions of certain disability income payments." (page 56630 first column), a new introductory paragraph should be added to read as follows:

"The following questions and answers relate to the exclusion of certain disability income payments under section 105 (d) of the Internal Revenue Code of 1954, as amended by section 505 (a) and (c) of the Tax Reform Act of 1976 (90 Stat. 1566):"

ROBERT A. BLEY,
Acting Director, Legislation and Regulations Division.

[FR Doc.77-1312 Filed 1-13-77;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 609—THE WOMEN'S AND CHILDREN'S UNDERWEAR AND WOMEN'S BLOUSE INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 647 (41 FR 40254), the Secretary of Labor appointed and convened Industry Committee No. 138-A for the Women's and Children's Underwear and Women's Blouse Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 138–A are hereby published, revising § 609.2 of Part 609, Title 29, Code of Federal Regulations. The increases in future wage rates prescribed by section 6 of the 1974 Fair Labor Standards Amendments are set forth in this wage order. The other wage rates have heretofore reached the mainland rate and are continued.

As amended § 609.2(a) reads as follows:

§ 609.2 Wage rates.

* * * * *

(a) *Pre-1961 coverage classification.* (1) The minimum wage for this classification is $2.05 an hour through April 30, 1977. Under section 6(c) the rate will be increased by $0.15 an hour on May 1, 1977, and on May 1 of each subsequent year until the mainland rate is reached (section 6(c)(2)).

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended (29 U.S.C. 205, 206, 208).)

Effective date. The effective date of this amendment is January 30, 1977.

Signed at Washington, D.C., on this 11th day of January, 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division U.S. Department of Labor.

[FR Doc.77-1291 Filed 1-13-77;8:45 am]

PART 672—THE BUSINESS, PROFESSIONAL, AND MISCELLANEOUS SERVICES INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 647 (41 FR 40254), the Secretary of Labor appointed and convened Industry Committee No. 138–B for the Business, Professional and Miscellaneous Services Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 138–B are hereby published, revising § 672.2 of Part 672, Title 29, Code of Federal Regulations. The other wage rates have heretofore reached the mainland rate and are continued.

As amended § 672.2(a)(1) reads as follows:

§ 672.2 Wage rates.

* * * * *

(a) *Pre-1966 coverage classifications.*

* * * * *

(1) *Watching, protective and janitorial services classification.* (i) The minimum wage rate for this classification is $2.15 an hour through January 31, 1977. On February 1, 1977, the wage rate in this section is increased to $2.30 an hour.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended (29 U.S.C. 205, 206, 208).)

Effective date. These amendments are effective on February 1, 1977.

Signed at Washington, D.C., on this 11th day of January, 1977.

RONALD JAMES,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.77-1292 Filed 1-13-77;8:45 am]

PART 673—FOOD AND KINDRED PRODUCTS INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 646 (41 FR 36705), the Secretary of Labor appointed and convened Industry Committee No. 135 for Food and Kindred Products Industry, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee 135 are hereby published, revising §§ 673.1, 673.2(a)(5), (a)(6), (a)(7), and (a)(8) and 673.2(b)(5) and (b)(6) of Part 673, Title 29, Code of Federal Regulations. The other wage rates have heretofore reached the mainland rates and are continued.

As amended §§ 673.1 and 673.2 read as follows:

§ 673.1 Definition.

The canning, preserving (including freezing, drying, curing, pickling, and similar processes), or other manufacturing or processing, and the packaging in conjunction therewith, of foods, ice, alcoholic and non-alcoholic beverages, the handling, grading, packing, or preparing in their raw or natural state of fresh vegetables, fresh fruits, nuts, or edible field crops, and the gathering of wild plant or animal life; the production of raw sugar, cane juice, molasses, and refined sugar, and incidental by-products, and all railroad transportation activities carried on by a producer of any of these products (or by any firm owned or controlled by, or owning and controlling such producer, or by any firm owned or controlled by the parent company of such producer) where the railroad transportation activities are in whole or in part used for the production or shipment of the products of the industry, and any transportation activities by truck, vessel, or other vehicle performed by a producer of products of such producer: *Provided, however,* That the industry shall not include any product or activity included in the chemical, petroleum, and related products industry or any transportation activity covered by the wage order for the communications, utilities, and transportation industry, or any transportation activity in which the agricultural exemption contained in section 13(a) of the Act was applicable prior to February 1, 1967: and *provided, further,* That the industry shall not include sugar and other food manufacturing activities covered by the wage order for the government service industry.

The industry includes, but is not limited to, the manufacture or processing of meat products, poultry and poultry products, milk and dairy products, fish and seafood products, fruit and vegetable products, grains and grain products, sugar and confectionery products, fats and oils, bakery products, beverages, and miscellaneous food preparations and kindred products.

§ 673.2 Wage rates.

* * * * *

(a) *Pre-1966 coverage classifications.*

* * *

(5) *Milk processing and distribution classification.* (i) The minimum wage rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) the rate will be increased by $0.15 an hour on May 1, 1977, and on May 1 of each subsequent year until the mainland rate is reached (section 6(c)(2)).

* * * * *

(6) *Candy and gum products classification for pre-1961 coverage.* (i) The minimum wage rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) the rate will be increased by $0.15 an hour on May 1, 1977, and on May 1 of each subsequent year until the mainland rate is reached (section 6(c)(2)).

* * * * *

(7) *Candy and gum products classification for 1961 coverage.* (i) The minimum wage rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) the rate will be increased by $.15 an hour on May 1, 1977, and on May 1 of each subsequent year until the mainland rate is reached (section 6(c)(2)).

* * * * *

(8) *Other products and activaties classification.* (i) The minimum wage rate for this classification is $2.23 an hour through April 30, 1977. The rate is increased to $2.30 an hour on May 1, 1977, by reason of section 6(c)(2).

* * * * *

(b) *1966 coverage classifications.*

* * * * *

(5) *Milk processing and distribution classification.* (i) The minimum wage rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) the rate will be increased by $.15 an hour on May 1, 1977, and on May 1 of each subsequent year until the mainland rate is reached (section 6(c)(2)).

* * * * *

(6) *Candy and gum products classification.* (i) The minimum wage rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) the rate will be increased by $.15 an hour on May 1, 1977, and on May 1 of each subsequent year until the mainland rate is reached (section 6(c)(2)).

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended (29 U.S.C. 205, 206, 208).)

Effective date. The effective date of these amendments is January 30, 1977.

Signed at Washington, D.C., this 11th day of January, 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.77-1293 Filed 1-13-77;8:45 am]

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

[Docket No. S-102]

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Ground-Fault Protection

Correction

In FR Doc. 76-37472 appearing at page 55696 in the issue for Tuesday, December 21, 1976 the following corrections should be made:

(1) On page 55697, first column, eighteenth line from the top, after the word "economic" insert "impact".

(2) On page 55699, middle column, delete the eighth line from the bottom and insert: "would actually be idled, instead of 10."

Title 36—Parks, Forests, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

NATIONAL FOREST SYSTEM

Prohibitions

On October 15, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 45577) for the purpose of amending or revoking current regulations on prohibited acts related to the National Forest System, and to combine all such regulations in one part of the Code of Federal Regulations, establish a uniform system for adopting and posting rules, and clarify relevant delegations of authority.

Interested persons were given until November 29, 1976, to submit written data, views or objections. All comments received were given full and careful consideration in developing final regulations. The full text of such comments are on file and available for public inspection in Room 4017, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Most comments received concerned format, style of expression, grammatical preferences, and clarification. More substantive comments received and results of their consideration are summarized as follows:

Comment: The regulations are excessive and unduly harass the general public; permits for non-commercial purposes should not be required; the regulations should be modified to include only specific reference to specific real problems; Federal employees should be penalized for undue interference with members of the general public; proper posting should be mandatory; and a review board should be established to hear complaints by members of the public.

Response: The general tenor of the comments is at cross purposes with the basic reason for the regulations, *i.e.*, the protection first of the public and the next of the lands within the National Forest System for the long-range benefit of the general public; further, that such lands are to be managed in accord with the Multiple Use-Sustained Yield, Resources Planning, National Environmental Policy, Wilderness, National Forest Management, and related Acts. A number of changes have been made to simplify these rules, and to make more specific reference to the specific real problems covered.

Comment: More specific details on prohibited acts should be contained in the Forest Service Manual, and present regulations should not be reissued.

Response: The policy of the Department to follow the rulemaking requirements of the Administrative Procedures Act requires that changes and additions be published in the FEDERAL REGISTER. Certain changes are necessary due to changing delegations of authority, and matters not covered by existing regulations.

Comment: Some prohibitions are in conflict with rights being exercised by persons engaged in authorized activities within the National Forest System, particularly livestock and timber operations.

Response: The matters cited as in potential conflict chiefly concern prohibitions which may be applied under Subpart B. Paragraph (e) of § 261.50 provides for exemptions which recognize most of these practices. The language in § 261.10 is revised to the extent practicable.

Comment: Posting of Subpart E Orders should include both placing a copy in the Offices of the District Ranger and Forest Supervisor and displaying the order so as to reasonably bring it to the attention of the public.

Response: Section 261.51 is revised to require this procedure.

Comment: Section 261.3 is not clear and contains factors which are too subjective.

Response: This section is revised to clarify its meaning and to reduce the possible need for subjective criteria.

Comment: Section 261.10 should include language to cover private personal property lawfully being used on National Forest System lands.

Response: The statutes under which these regulations are issued do not contain authority to cover such property.

Comment: Off-road vehicles should be prohibited except for scientific research, emergencies, or in designated areas with an approved EIS within the National Forest System until studies, which the Department should undertake, have been completed to determine the effect of noise on wildlife.

Response: In view of the limited evidence that noise may have an adverse effect, and the effect such a decision would have on an entire class of recreation users, it is decided not to incorporate this change which can be made later if determined to be warranted.

Comment: Requirements for motorcycle and snowmobile operators are not accurately reflected in § 261.14.

Response: This section, now § 261.13, is revised in accord with the suggestions made.

Comment: Possible prohibitions on forest development and scenic trails should include travel by skis, snowshoes or any other means, as additions to § 261.56.

Response: This section is rewritten as § 261.18 and § 261.55. This change covers the idea in the comment.

A separate rulemaking document, being published concurrently, makes the change in 7 CFR 2.60(b)(1) as proposed. A technical change has been made in 36 CFR 261.70 to reflect the revised delegations of authority. In a separate notice being published concurrently, the Chief, Forest Service, has delegated authority to issue § 261.70 regulations to each Regional Forester.

Other than reflected above, there are no changes of substance.

These actions were taken pursuant to the requirements of the Administrative Procedures Act (5 U.S.C. 553), adopted by this Department as a matter of policy on July 24, 1971 (36 FR 13804).

As a result of this process the following changes are made:

PART 212—ADMINISTRATION OF THE FOREST DEVELOPMENT TRANSPORTATION SYSTEM

1. In § 212.7 paragraph (a)(2) is revised to read:

§ 212.7 Road system management.

(a) Traffic rules. * * *

* * * * *

(2) *Specific:* The following specific traffic rules shall apply unless otherwise expressly authorized in writing.

* * * * *

2. In § 212.7(a)(3) the last sentence reading: "Using vehicles upon a road during any period when the road is closed is prohibited" is revoked.

3. Section 212.7(a)(4) is revoked.

4. In § 212.7(b)(2) the last sentence reading, "Violation of the posted rules is prohibited" is revoked.

§ 212.8 [Amended]

5. The last sentence of § 212.8(a) is amended to read:

"Construction, reconstruction or maintenance of a road or highway requires written authorization."

§ 212.20 [Amended]

6. In § 212.20 paragraphs (c)(3), (c)(4) and (d) are revoked.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551) and Sec. 205, 72 Stat. 907 (23 U.S.C. 205).)

PART 221—TIMBER

§ 221.26 [Amended]

In § 221.26(a) the last sentence reading, "The sale or exchange of timber or other forest products obtained under free use is prohibited" is revoked.

PART 231—GRAZING

§ 231.11 [Amended]

In § 231.11(d) the citation to 36 CFR 261.13 is amended to read "36 CFR 212.2."

PART 251—LAND USES

§ 251.25 [Revoked]

Section 251.25 is revoked.

Part 261 is revised and a new Part 262 is added to read as follows:

PART 261—PROHIBITIONS

Subpart A—General Prohibitions

Sec.

Subpart B—Prohibitions in Areas Designated by Order

Subpart C—Prohibitions in Regions

AUTHORITY: 30 Stat. 35, as amended, (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 1011 (f)); 82 Stat. 916 (16 U.S.C. 1281(d)); 82 Stat. 922 (16 U.S.C. 1246(i)), unless otherwise noted.

Subpart A—General Prohibitions

§ 261.1 Scope.

The prohibitions in this part apply, except as otherwise provided, when:

(a) An act or omission occurs in the National Forest System or on a Forest development road or trail.

(b) An act or omission affects, threatens, or endangers property of the United States administered by the Forest Service.

(c) An act or omission affects, threatens, or endangers a person using, or engaged in the protection, improvement or administration of the National Forest System or a Forest development road or trail.

§ 261.2 Definitions.

The following definitions apply to this part:

(a) "Campfire" means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or esthetic purposes. "Fire" includes campfire.

(b) "Camping" means the temporary use of National Forest System lands for the purpose of overnight occupancy without a permanently-fixed structure.

(c) "Camping equipment" means the personal property used in or suitable for camping, and includes any vehicle used for transport and all personal property in possession of a person camping.

(d) "Developed recreation site" means an area which has been improved or developed for recreation.

(e) "Forest development road" means a road wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in the Forest Development Road System Plan.

(f) "Forest development trail" means a trail wholly or partly within or adjacent to and serving a part of the National Forest System and which has been included in the Forest Development Trail System Plan.

(g) "Forest officer" means an employee of the Forest Service.

(h) "National Forest System" includes all national forest lands and waters reserved or withdrawn from the public domain of the United States, national forest lands and waters acquired through purchase, exchange, donation, or other means, national grasslands and land utilization projects and waters administered under Title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters, or interests therein acquired under the Wild and Scenic River Act (16 U.S.C. 1271–1287) or National Trails System Act (16 U.S.C. 1241–1249).

(i) "National Forest wilderness" means those parts of the National Forest System which were designated units of the National Wilderness Preservation System by the Wilderness Act of September 3, 1964, and such other areas of the National Forest System as are added to the wilderness system by act of Congress.

(j) "Person" means natural person, corporation, company, partnership, trust, firm, or association of persons.

(k) "Permission" means oral authorization by a forest officer.

(l) "Permit" means authorization in writing by a forest officer.

(m) "Primitive Areas" are those areas within the National Forest System classified as "Primitive" on the effective date of the Wilderness Act, September 3, 1964.

(n) "Publicly nude" means nude in any place where a person may be observed by another person. Any person is nude if the person has failed to cover the rectal area, pubic area or genitals. A female person is also nude if she has failed to cover both breasts below a point immediately above the top of the areola. Each such covering must be fully opaque. No person under the age of 10 years shall be considered publicly nude.

(o) "State" means any State, the Commonwealth of Puerto Rico, and the District of Columbia.

(p) "State law" means the law of any State in whose exterior boundaries an act or omission occurs regardless of whether State law is otherwise applicable.

(q) "Stove fire" means a campfire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including a space-heating device.

(r) "Unauthorized livestock" means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro, by § 231.11(a)(2), which is not authorized by permit to be upon the land on which the livestock is located and which is not related to use authorized by a grazing permit.

§ 261.3 Interfering with forest officers prohibited.

Threatening, resisting, intimidating, or interfering with any forest officer engaged in or on account of the performance of his official duties in the protection, improvement, or administration of the National Forest System is prohibited.

§ 261.4 Disorderly conduct.

The following are prohibited:

(a) Engaging in fighting, or in threatening or abusive behavior.

(b) Inciting or participating in a riot.

(c) Making unreasonable noise.

§ 261.5 Fire.

The following are prohibited:

(a) Carelessly or negligently throwing or placing any burning, glowing, or ignited substance, or any other substance or thing which may cause a fire, into any place where it might start a fire.

(b) Firing any tracer bullet or incendiary ammunition.

(c) Causing timber, trees, slash, brush or grass to burn except as authorized by permit.

(d) Leaving a fire without completely extinguishing it.

(e) Allowing a fire to escape from control.

(f) Building, attending, maintaining, or using a campfire without removing all flammable material from around the campfire adequate to prevent its escape.

§ 261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting, killing, destroying, girdling, chipping, chopping, boxing, injuring, or otherwise damaging, or removing, any timber, tree or other forest product, except as authorized by permit, timber sale contract, Federal law or regulation.

(b) Cutting any standing tree, under permit or timber sale contract, before a Forest Officer has marked it or has otherwise designated it for cutting.

(c) Removing any timber or other forest product cut under permit or timber sale contract, except to a place designated for scaling, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a forest officer.

(d) Stamping, marking with paint, or otherwise identifying any tree or other forest product in a manner similar to that employed by forest officers to mark or designate tree or any other forest product for cutting or removal.

(e) Loading, removing or hauling any timber or other forest product acquired under any permit or timber sale contract unless such product is identified as required in such permit or contract.

(f) Selling or exchanging timber or other forest product obtained under free use pursuant to §§ 221.26, 221.27, or 221.28.

(g) Violating any timber export or substitution restriction in § 221.25.

§ 261.7 Livestock.

The following are prohibited:

(a) Placing or allowing unauthorized livestock to enter or be in the National Forest System.

(b) Not removing unauthorized livestock from the National Forest System when requested by a forest officer.

(c) Failing to reclose any gate or other entry.

(d) Molesting, injuring, removing or releasing any livestock impounded under § 262.2 while in the custody of the Forest Service or its authorized agents.

(e) Removing or attempting to remove, converting to use, causing the death of, harassing or interfering with any wild, free-roaming horse or burro defined in § 231.11(a)(2), or selling or commercially processing any part or carcass thereof.

§ 261.8 Fish and wildlife.

The following are prohibited within the boundaries of a national game refuge or preserve or wildlife preserve in the National Forest System and are also prohibited in other parts of the National Forest System to the extent Federal or State law is violated:

(a) Hunting, trapping, fishing, catching, molesting, killing or having in possession any kind of wild animal, bird, or fish, or taking the eggs of any such bird.

(b) Possessing a firearm or other implement designed to discharge a missile capable of destroying animal life.

(c) Possessing equipment which could be used for hunting, fishing, or trapping.

(d) Possessing a dog not on a leash or otherwise confined.

§ 261.9 Property.

The following are prohibited:

(a) Mutilating, defacing, removing, disturbing injuring or destroying any natural feature or any property of the United States.

(b) Removing, destroying or damaging any plant that is classified as a threatened, endangered, rare or unique species.

(c) Entering any building or structure owned or controlled by the United States when such building or structure is not open to the public.

(d) Using any herbicide, pesticide or fungicide except for personal use for medical purposes or as an insect repellant or with permission for other minor uses.

(e) Digging in, excavating, disturbing, injuring, or destroying any archeological, paleontological, or historic site, or removing, disturbing, injuring, or destroying an object in such a site.

§ 261.10 Occupancy and use.

The following are prohibited:

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement without a permit.

(b) Taking possession of, occupying, or otherwise using National Forest System lands for residential purposes without a permit or as otherwise authorized by Federal law or regulation.

(c) Selling or offering for sale any merchandise unless authorized by Federal law, regulation or permit.

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property: (1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or (2) across or on a Forest Development road or a body of water adjacent thereto whereby any person or property is exposed to injury or damage as a result of such discharge.

(e) Abandoning a vehicle, animal, or personal property.

(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or convenience of any person.

(g) Posting, placing, or erecting any paper, notice, advertising material, sign, or similar matter without a permit.

(h) Operating or using in or near a campsite, developed recreation site, or over an adjacent body of water without a permit, any device which produces noise, such as a radio, television, musical instrument, motor or engine in such a manner and at such a time so as to unreasonably disturb any person.

(i) Operating or using a public address system, whether fixed, portable, or vehicle mounted, in or near a campsite, developed recreation site, or over an adjacent body of water without a permit.

(j) Conducting, demonstrating, or participating in a public meeting, assembly, or special event, except as authorized by permit.

§ 261.11 Sanitation.

The following are prohibited:

(a) Depositing in any toilet, toilet vault, or plumbing fixture, any bottle, can, cloth, rag, metal, wood, stone, flammable liquid, or other substance which could damage or interfere with the operation or maintenance of the fixture.

(b) Possessing or leaving refuse, debris, or litter in an exposed or unsanitary condition.

(c) Placing in or near a stream, lake, or other water any substance which does or may pollute a stream, lake, or other water.

(d) Failing to dispose of all garbage, including any paper, can, bottle, sewage, waste water or material, or rubbish either by removal from the site or area, or by depositing it into receptacles or at places provided for such purposes.

(e) Dumping or leaving in a refuse container, dump, or similar facility, refuse, debris, or litter brought as such from private property or from land occupied under permit.

§ 261.12 Forest development roads and trails.

The following are prohibited:

(a) Violating the load, weight, height, length or width limitations prescribed by State law, except by permit, written agreement, or where greater or lesser limits have been established pursuant to § 261.54.

(b) Failing to have a vehicle weighed at a Forest Service weighing station, if required by a sign.

(c) Failing to stop a vehicle when directed to do so by a forest officer.

(d) Damaging and leaving in a damaged condition any such road, trail, or segment thereof.

(e) Blocking, restricting, or otherwise interfering with the use of a road, trail, or gate.

(f) Using motorized vehicles in excess of 40 inches in width on a trail.

§ 261.13 Use of vehicles off roads.

It is prohibited to operate any vehicle off Forest Development, State or County roads:

(a) Without a valid license as required by State law.

(b) Without an operable braking system.

(c) From one-half hour after sunset to one-half hour before sunrise unless equipped with working head and tail lights.

(d) In violation of any applicable noise emission standard established by any Federal or State agency.

(e) While under the influence of alcohol or other drug;

(f) Creating excessive or unusual smoke;

(g) Carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.

§ 261.14 Developed recreation sites.

The following are prohibited:

(a) Occupying any portion of the site for other than recreation purposes.

(b) Building, attending, maintaining, or using a fire outside of a fire ring provided by the Forest Service for such purpose or outside of a stove, grill or fireplace.

(c) Cleaning or washing any personal property, fish, animal, or food at a hydrant or at a water faucet not provided for that purpose.

(d) Discharging or igniting a firecracker, rocket or other firework, or explosive.

(e) Occupying between 10 p.m. and 6 a.m. a place designated for day use only.

(f) Failing to remove all camping equipment or personal property when vacating the area or site.

(g) Placing, maintaining, or using camping equipment except in a place specifically designated or provided for such equipment.

(h) Without permission, failing to have at least one person occupy a camping area during the first night after camping equipment has been set up.

(i) Leaving camping equipment unattended for more than 24 hours without permission.

(j) Bringing in or possessing an animal, other than a seeing eye dog, unless it is crated, caged, or upon a leash not longer than six feet, or otherwise under physical restrictive control.

(k) Bringing in or possessing in a swimming area an animal, other than a seeing eye dog.

(l) Bringing in or possessing a saddle, pack, or draft animal, except as authorized by a sign.

(m) Operating or parking a motor vehicle or trailer except in places developed for this purpose.

(n) Operating a bicycle, motorbike, or motorcycle on a trail unless designated for this use.

(o) Operating a motorbike, motorcycle, or other motor vehicle for any purpose other than entering or leaving the site.

(p) Distributing any handbill, circular, paper, or notice without a permit.

(q) Depositing any body waste except into receptacles provided for that purpose.

§ 261.15 Admission, recreation use and special recreation permit fees.

Failing to pay any fee established for admission or entrance to, or use of a site, facility, equipment, or service within the National Forest System furnished by the United States is prohibited. The statutory maximum for a violation of this section is a fine of not more than $100.00. (Sec. 2, 78 Stat. 897, as amended; 16 USC 4601–6(e))

§ 261.16 National Forest wilderness.

The following are prohibited in a National Forest wilderness:

(a) Possessing or using a motor or motorized equipment except small battery-powered, hand-held devices, such as cameras, shavers, flashlights and Geiger counters.

(b) Possessing or using a hang glider or bicycle.

(c) Landing of aircraft, or the dropping or picking up of any material, supplies, or person from aircraft, except by permit or as specifically authorized by Federal law or regulation.

§ 261.17 Boundary Waters Canoe Area, Superior National Forest.

The following are prohibited in the Boundary Waters Canoe Area:

(a) Possessing or transporting any motor or other mechanical device capable of propelling a watercraft through water by any means, except by permit or as specifically authorized by Federal law or regulation.

(b) Transporting, using, or mooring amphibious craft or any type or any watercraft designed for or used as floating living quarters.

(c) Using wheels, rollers, or other mechanical devices for the overland transportation of any watercraft, except by permit or as specifically authorized by Federal law or regulation.

§ 261.18 Pacific Crest National Scenic Trail.

It is prohibited to use a motorized vehicle on the Pacific Crest National Scenic Trail without a permit.

§ 261.19 National Forest primitive areas.

It is prohibited in a National Forest primitive area to violate any prohibition in § 293.17 of this title.

§ 261.20 Unauthorized use of "Smokey Bear" and "Woodsy Owl" symbol.

(a) Manufacture, importation, reproduction or use of "Smokey Bear" except as provided under §§ 261.2, 271.3, or 271.4 is prohibited.

(b) Manufacture, importation, reproduction, or use of "Woodsy Owl" except as provided under §§ 262.2, 272.3, or 272.4 is prohibited.

Subpart B—Prohibitions in Areas Designated by Order

§ 261.50 Orders.

(a) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may isue orders which close or restrict the use of described areas within the area over which he has jurisdiction. An order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in this subpart or any portion thereof.

(b) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of any forest development road or trail.

(c) Each order shall:

(1) For orders issued under paragraph (a) of this section, describe the area to which the order applies;

(2) For orders issued under paragraph (b) of this section, describe the road or trail to which the order applies;

(3) Specify the times during which the prohibitions apply if applied only during limited times;

(4) State each prohibition which is applied;

(5) Be posted in accordance with § 261.51.

(d) The prohibitions which are applied by an order are supplemental to the general prohibitions in Subpart A.

(e) An order may exempt any of the following persons from any of the prohibitions contained in the order:

(1) Persons with a permit authorizing the otherwise prohibited act or omission. The issuing officer may include in any permit such conditions as he considers necessary for the protection or administration of the road, trail, or National Forest System or for the promotion of the health, safety, or welfare of its users;

(2) Owners or lessees of land in the area;
(3) Residents in the area;
(4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty; and
(5) Persons engaged in a business, trade, or occupation in the area.
(f) It is prohibited to violate the terms or conditions of a permit issued under (e)(1) of this section.
(g) Any person wishing to use a Forest development road or trail or a portion of the National Forest System, should contact the Forest Supervisor, Director, Administrator, or District Ranger to ascertain the special restrictions which may be applicable thereto.

§ 261.51 Posting.

Posting is accomplished by:
(a) Placing a copy of the order imposing each prohibition in the offices of the Forest Supervisor and District Ranger, or equivalent officer who have jurisdiction over the lands affected by the order, and
(b) Displaying each prohibition imposed by an order in such locations and manner as to reasonably bring the prohibition to the attention of the public.

§ 261.52 Fire.

When provided by an order, the following are prohibited:
(a) Building, maintaining, attending or using a fire, campfire, or stove fire.
(b) Using an explosive.
(c) Smoking.
(d) Smoking, except inside a building or vehicle, or while seated in an area at least three feet in diameter that is barren or cleared of all flammable materials.
(e) Going into or being upon an area.
(f) Possessing, discharging or using any kind of firework or other pyrotechnic device.
(g) Entering an area without any firefighting tool prescribed by the order.
(h) Operating an internal combustion engine except on a road.
(i) Welding, or operating acetylene or other torch with open flame.
(j) Operating or using any internal or external combustion engine on any timber, brush, or grass covered land, including trails traversing such land, without a spark arrester, maintained in effective working order, meeting either (i) Department of Agriculture, Forest Service Standard 5100-1a; or (ii) the 80 percent efficiency level determined according to the appropriate Society of Automotive Engineers (SAE) recommended Practices J335 and J350.
(k) Violating any state law specified in the order concerning burning, fires or which is for the purpose of preventing, or restricting the spread of, fires.

§ 261.53 Special closures.

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:
(a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.
(b) Special biological communities.
(c) Objects or areas of historical, archeological, geological, or paleontological interest.
(d) Scientific experiments or investigations.
(e) Public health or safety.
(f) Property.

§ 261.54 Forest development roads.

When provided by an order, the following are prohibited:
(a) Using any type of vehicle prohibited by the order.
(b) Use by any type of traffic prohibited by the order.
(c) Using a road for commercial hauling without a permit or written authorization.
(d) Operating a vehicle in violation of the speed, load, weight, height, length, width, or other limitations specified by the order.
(e) Being on the road.

§ 261.55 Forest development trails.

When provided by an order, the following are prohibited:
(a) Being on the trail.
(b) Using a bicycle or motorized vehicle.
(c) Possessing or using a saddle, pack, or draft animal.
(d) Shortcutting a switchback.

§ 261.56 Use of vehicles off forest development roads.

When provided by an order, it is prohibited to possess or use a vehicle off forest development roads.

§ 261.57 National Forest wilderness.

When provided by an order, the following are prohibited:
(a) Entering or being in the area.
(b) Possessing camping or pack-outfitting equipment, as specified in the order.
(c) Possessing a firearm or firework.
(d) Possessing any non-burnable food or beverage containers, including deposit bottles, except for non-burnable containers designed and intended for repeated use.
(e) Grazing.
(f) Storing equipment, personal property or supplies.
(g) Disposing of debris, garbage, or other waste.

§ 261.58 Occupancy and use.

When provided by an order, the following are prohibited:
(a) Camping for a period longer than allowed by the order.
(b) Entering or using a developed recreation site or portion thereof.
(c) Entering or remaining in a campground during night periods prescribed in the order except for persons who are occupying such campgrounds.
(d) Occupying a developed recreation site with prohibited camping equipment prescribed by the order.
(e) Camping.
(f) Using a campsite or other area described in the order by more than the number of users allowed by the order.
(g) Parking or leaving a vehicle in violation of a posted sign.
(h) Parking or leaving a vehicle outside a parking space assigned to one's own camp unit.
(i) Possessing, parking or leaving more than two vehicles, except motorcycles or bicycles, per camp unit.
(j) Being publicly nude.
(k) Entering or being in a body of water.
(l) Being in the area after sundown or before sunrise.
(m) Discharging a firearm, air rifle, or gas gun.
(n) Possessing or operating a motorboat.
(o) Water skiing.
(p) Storing or leaving a boat or raft.
(q) Operating any watercraft in excess of a posted speed limit.
(r) Launching a boat except at a designated launching ramp.
(s) Possessing or transporting a bird or animal.
(t) Possessing or transporting any part of a tree or plant.
(u) Being in the area between 10 p.m. and 6 a.m. except a person who is camping or who is visiting a person camping in that area.
(v) Hunting or fishing.

Subpart C—Prohibitions in Regions

§ 261.70 Issuance of regulations.

(a) Pursuant to 7 CFR 2.60, the Chief, and each Regional Forester, to whom the Chief has delegated authority, may issue regulations prohibiting acts or omissions within all or any part of the area over which he has jurisdiction, for one or more of the following purposes;
(1) Fire prevention or control.
(2) Disease prevention or control.
(3) Protection of property, roads or trails.
(4) Protection of threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish, or special biological communities.
(5) Protection of objects or places of historical, archaeological, geological or paleontological interest.
(6) Protection of scientific experiments or investigations.
(7) Public safety.
(8) Protection of health.
(9) Establishing reasonable rules of public conduct.
(b) Regulations issued under this subpart shall not be contrary to or duplicate any prohibition which is established under existing regulations.
(c) In issuing any regulations under paragraph (a) of this section, the issuing officer shall follow 5 U.S.C. 553.
(d) In a situation when the issuing officer determines that a notice of proposed rule making and public participation thereon is impracticable, unnecessary, or contrary to the public interest, he shall issue, with the concurrence of the Chief, an interim regulation containing an expiration date.
(e) No interim regulation issued under paragraph (d) of this section will be effective for more than 90 days unless re-

adopted as a permanent rule after a notice of proposed rule making under 5 USC 553 (b) and (c).

§ 261.71 Regulations applicable to Region 1, Northern Region, as defined in § 200.2. [Reserved]

§ 261.72 Regulations applicable to Region 2, Rocky Mountain Region, as defined in § 200.2. [Reserved]

§ 261.73 Regulations applicable to Region 3, Southwestern Region, as defined in § 200.2. [Reserved]

§ 261.74 Regulations applicable to Region 4, Intermountain Region, as defined in § 200.2. [Reserved]

§ 261.75 Regulations applicable to Region 5, California Region, as defined in § 200.2. [Reserved]

§ 261.76 Regulations applicable to Region 6, Pacific Northwest Region, as defined in § 200.2. [Reserved]

§ 261.77 Regulations applicable to Region 8, Southern Region, as defined in § 200.2. [Reserved]

§ 261.78 Regulations applicable to Region 9, Eastern Region, as defined in § 200.2. [Reserved]

§ 261.79 Regulations applicable to Region 10, Alaska Region, as defined in § 200.2. [Reserved]

PART 262—REWARDS AND IMPOUNDMENTS

Sec.
262.1 Rewards in connection with fire or property prosecutions.
262.2 Impoundment and disposal of unauthorized livestock.
262.3 Impounding of dogs.
262.4 Impounding of personal property.
262.5 Removal of obstructions.

AUTHORITY: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 1011(f)); 58 Stat. 736 (16 U.S.C. 559r), unless otherwise noted.

§ 262.1 Rewards in connection with fire or property prosecutions.

(a) Hereafter, provided Congress shall make the necessary appropriation or authorize the payment thereof, the Department of Agriculture will pay the following rewards:

(1) Not exceeding $1,000 and not less than $100 for information leading to the arrest and conviction of any person on the charge of willfully or maliciously setting on fire, or causing to be set on fire, any timber, underbrush, or grass upon the lands of the United States within the National Forest System or nearby;

(2) Not exceeding $300 and not less than $50 for information leading to the arrest and conviction of any person on the charge of building or causing a fire on lands of the United States within the National Forest System or nearby, and leaving said fire which escapes before the same has been totally extinguished;

(3) Not exceeding $1,000 and not less than $50 for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States.

(4) A reward may be paid to the person or persons giving the information leading to such arrest and conviction upon presentation to the Department of Agriculture of satisfactory evidence thereof, subject to the necessary appropriation as aforesaid, or otherwise as may be provided.

(c) Officers and employees of the Department of Agriculture are barred from receiving such rewards.

(d) The Department of Agriculture reserves the right to refuse payments of any claim for reward when, in its opinion, collusion or improper methods have been used to secure arrest and conviction. The Department also reserves the right to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances entitle the person to a reward on each conviction.

(e) Applications for reward should be forwarded to the Regional Forester, Research Director, or Area Director who has responsibility for the land or property involved in the trespass. However, no application will be considered unless presented to a responsible Forest Service officer within three months from the date of conviction of an offender. In order that all claimants for rewards may have an opportunity to present their claims within the prescribed limit, the Department will not take action with respect to rewards for three months from the date of the conviction of an offender. (58 Stat. 736; 16 U.S.C. 559a.)

§ 262.2 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock or livestock in excess of those authorized by a grazing permit on the National Forest System, which are not removed therefrom within the periods prescribed by this regulation, may be impounded and disposed of by a forest officer as provided herein.

(a) When a Forest officer determines that such livestock use is occurring, has definite knowledge of the kind of livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound such livestock is mailed by certified or registered mail or personally delivered to such owners.

(b) When a Forest officer determines that such livestock use is occurring, but does not have complete knowledge of the kind of livestock, or if the name of the owner is unknown, such livestock may be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will identify the area in which it will be effective.

(c) Unauthorized livestock or livestock in excess of those authorized by a grazing permit on National Forest System which are owned by persons given notice under paragraph (a) of this section, and any such livestock in areas for which a notice has been posted and published under paragraph (b) of this section, may be impounded without further notice any time within the 12-month period immediately following the effective date of the notice or notices given under paragraphs (a) and (b) of this section.

(d) Following the impoundment of livestock, a notice of sale of impounded livestock will be published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will describe the livestock and specify the date, time, and place of the sale. The date shall be at least five days after the publication and posting of such notice.

(e) The owner may redeem the livestock any time before the date and time set for the sale by submitting proof of ownership and paying for all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock. However, when the impoundment costs exceed fair market value a minimum acceptable redemption price at fair market value may be established for each head of livestock.

(f) If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be sold at public sale to the highest bidder, providing this bid is at or above the minimum amount set by the Forest Service. If a bid at or above the minimum amount is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill or other written instrument evidencing the sale. Agreements may be made with State agencies whereby unbranded livestock of unknown ownership are released to the agency for disposition in accordance with State law.

§ 262.3 Impounding of dogs.

Any dog found running at large in a part of the National Forest System, which has been closed to dogs running at large, may be captured and impounded by Forest officers. Forest officers will notify the owner of the dog, if known, of such impounding, and the owner will be given five days to redeem the dog. A dog may redeemed by the owner submitting adequate evidence of ownership and paying all expenses incurred by the Forest Service in capturing and impounding it. If the owner fails to redeem the dog within five days after notice, or if the owner cannot be ascertained within 10 days from the date of impounding, the dog may be destroyed or otherwise disposed of at the discretion of the Forest officer having possession of it.

§ 262.4 Impounding of personal property.

(a) Automobiles or other vehicles, trailers, boats, and camping equipment and other inanimate personal property on National Forest System lands without the authorization of a Forest officer which are not removed therefrom within the prescribed period after a warning notice as provided in this regulation may

be impounded by a Forest officer. Whenever such Forest officer knows the name and address of the owner, such impoundment may be effected at any time five days after the date that written notice of the trespass is mailed by registered mail or delivered to such owner.

(b) In the event the local Forest officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto.

(c) Personal property impounded under this regulation may be disposed of at the expiration of 90-days after the date of impoundment. The owner may redeem the personal property within the 90-day period by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, moving, impounding, storing, and otherwise caring for the property, and also for the value of the use of the site occupied during the period of the trespass.

(d) If the personal property is not redeemed on or before the date fixed for its disposition, it shall be sold by the Forest Service at public sale to the highest bidder. If no bid is received, the property, or portions thereof, may, in the discretion of the responsible Forest officer, be sold at private sale or be condemned and destroyed or otherwise disposed of. When personal property is sold pursuant to this regulation, the Forest officer making the sale shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

§ 262.5 Removal of obstructions.

A Forest officer may remove or cause to be removed, to a more suitable place, a vehicle or other object which is an impediment or hazard to the safety, convenience, or comfort of other users of an area of the National Forest System.

PART 271—USE OF "SMOKEY BEAR" SYMBOL

§ 271.5 [Reserved]

Section 271.5 is revoked and reserved.

PART 272—USE OF "WOODSY OWL" SYMBOL

§ 275.5 [Reserved]

Section 272.5 is revoked and reserved.

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

§ 291.1–291.8 [Reserved]

Sections 291.1 through, and including, 291.8 are revoked and reserved.

PART 295—USE OF OFF-ROAD VEHICLES

§ 295.6 [Revoked]

1. Section 295.6 is revoked.

§ 295.7 [Revoked]

2. Section 295.7 is revoked.

§ 295.8 [Revoked]

3. Section 295.8 is revoked.

Effective date: February 15, 1977.

JOHN A. KNEBEL,
Secretary.

JANUARY 11, 1977.

[FR Doc.77-1303 Filed 1-13-77;8:45 am]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 76-1; Rules Doc. A]

PART 201—GENERAL PROVISIONS

Use of Copyright Office Records for Compiling Mailing Lists and Similar Purposes; Miscellaneous Technical Amendments

On November 15, 1976, proposals were published in the FEDERAL REGISTER regarding (1) the addition of a new regulation § 201.9 governing the filing of agreements between copyright owners and public broadcasting entities; (2) the addition of a new regulation § 201.10 pertaining to the termination of transfers and licenses covering the renewal term of copyright as extended by Pub. L. 94-553 (90 Stat. 2541); (3) an amendment of § 201.2(b) of the existing Copyright Office regulations to delete the prohibition on the use of Office records for compiling mailing lists and the like; and (4) technical corrective amendments to other Copyright Office regulations. Interested persons were given until December 15, 1976 to submit comments. 41 FR 50300, corrected in part at 41 FR 51428.

Comments received in response to the proposals regarding the filing of agreements between copyright owners and public broadcasting entities and the termination of transfers covering the extended renewal term are now being considered by the Copyright Office; these proposals and the comments received in response thereto are not the subject of this rules document.

The proposed amendment to § 201.2 (b) of the regulations is to delete paragraph (2) of that section, which prohibits the "copying from the Copyright Office records of names and addresses for the purpose of compiling mailing lists and other similar uses." The Copyright Office had concluded that this prohibition is an unwarranted limitation on the public use of Office records. One comment was received in support of the proposed deletion; no comments were received in opposition.

The technical amendments were proposed to correct ZIP Code references in §§ 201.1 and 201.2(c)(2)(ii); to delete an out-dated reference to "Copyright Office Form C-85" and correct the CFR citation in § 201.8; and to identify Part 14 of the Catalog of Copyright Entries in § 201.3. No comments were received with respect to these proposed amendments.

In consideration of the foregoing, the proposed amendment to § 201.2(b) to delete the prohibition on the use of Office records for mailing lists and like uses and the proposed technical amendments to §§ 201.1, 201.2(c)(2)(ii), 201.3 and 201.8 are hereby adopted without change and are set forth below.

Effective date: As the amendment relating to the use of Office records is intended to relieve a restriction and as the technical amendments are to conform the regulations to existing facts, they shall become effective on January 14, 1977.

Dated: January 6, 1976.

BARBARA RINGER,
Register of Copyrights.

Approved by:

WILLIAM J. WELSH,
Acting Librarian of Congress.

1. Section 201.2(b)(2) is deleted and its number is reserved as follows:

§ 201.2 Information given by the Copyright Office.

* * * * *

(b) *Inspection and copying of records.* (1) Inspection and copying of completed records and indexes relating to a registration or a recorded document, and inspection of copies deposited in connection with a completed copyright registration, may be undertaken at such times as will not result in interference with or delay in the work of the Copyright Office.

(2) [Reserved]

§§ 201.1 and 201.2 [Amended]

2. Sections 201.1 and 201.2(c)(2)(ii) are amended to delete the ZIP Code identifications "20540" and to insert the ZIP code identifications "20559" after the words "Washington, D.C." in the addresses for the Register of Copyrights.

§ 201.3 [Amended]

3. Section 201.3 is amended to add the following clause at the end of the section: "Part 14—Sound Recordings, $10."

4. Section 201.8(b) is revised to read as follows:

§ 201.8 Import Statements.

* * * * *

(b) The provisions in the Customs regulations covering the use of the import statement are found in 19 CFR 133.45.

(17 U.S.C. 207.)

[FR Doc.77-1278 Filed 1-13-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR Temporary Regulation No. 25]

PART 9-7 CONTRACT CLAUSES

PART 9-15 CONTRACT COST PRINCIPLES AND PROCEDURES

ERDA Contract Cost Principles

JANUARY 4, 1977.

1. *Purpose:* Pending complete restructuring of ERDA-PR 9-15, the following cost principles are issued as directly supplementing FPR 1-15.205-3 and 1-15.205-35. Other principles may be promulgated from time to time, if needed, in the interval before the restructured ERDA-PR 9-15 is issued. The following principles will apply to the negotiation and administration of contracts, and subcontracts under cost-type contracts, in accordance with FPR 1-15.102. The provisions of ERDA-PR Temporary Regulations No. 11 and No. 13 are incorporated in this temporary regulation. Accordingly, ERDA-PR Temporary Regulations No. 11 and 13, dated October 7, 1975, and October 28, 1975, respectively, are hereby rescinded. The only substantive change to the above mentioned temporary regulations is the addition of the provision that allows the contracting officer to use other tests of reasonableness for bid and proposal expenses besides the 3-year average annual cost formula.

2. *Effective date:* This regulation becomes effective January 14, 1977.

3. *Expiration date:* This regulation will remain in effect until canceled or until its provisions are incorporated into a permanent ERDA procurement regulation.

4. *Explanation of changes:*

a. Section 9-7.5006-10, paragraph (d) (17) is revised and (d) (18) is added and reads as follows:

Subpart 9-7.50 Use of Standard Clauses

* * * * *

§ 9-7.5006 Standard ERDA clauses not included in § 9-7.5004 or § 9-7.5005.

* * * * *

§ 9-7.5006-10 Allowable costs and fixed fee (supply contracts and research and development contracts with concerns other than educational institutions).

* * * * *

(d) * * *

(17) *The costs of preparing bids and proposals* in accordance with § 9-15.205-3.

(18) *Independent research and development costs* in accordance with § 9-15.205-35.

b. Delete § 9-7.5006-10(e) (20) and reserve.

c. Section 9-7.5006-12 paragraph (d) (19) is revised and (d) (20) is added and reads as follows:

§ 9-7.5006-12 Allowable costs and fixed fee (architect-engineer contracts).

* * * * *

(d) * * *

(19) *The cost of preparing bids and proposals* in accordance with § 9-15.205-3.

NOTE.—This paragraph should be deleted for on-site architect-engineer contracts.

(20) *Independent research and development costs* in accordance with § 9-15.205-35.

NOTE.—This paragraph should be deleted for on-site architect-engineer contracts.

d. Delete § 9-7.5006-12(e)(18) and reserve.

e. A new Subpart 9-15.2, *Contracts With Commercial Organizations,* is added as follows:

Subpart 9-15.2—Contracts With Commercial Organizations

Sec.

9-15.205-3 Bidding costs.

9-15.205-35 Research and development costs.

Subpart 9-15.2 Contracts With Commercial Organizations

§ 9-15.205-3 Bidding costs.

The costs of preparing bids or proposals shall include an amount for absorption of their appropriate share of related indirect costs. A contractor's bidding costs are allowable in accordance with FPR 1-15.205-3 up to a ceiling amount equal to the average annual bidding costs computed from the actual costs for the contractor's three most recent years. However, at the discretion of the contracting officer, a ceiling amount in excess of the foregoing may be established when the contractor can demonstrate that the three year average annual bidding cost formula would produce a clearly inequitable cost recovery.

§ 9-15.205-35 Research and development costs.

(a) through (c) [Reserved]

(d) A contractor's costs of independent research are allowable in accordance with FPR 1-15.205-35(d) provided the research also is of benefit to the ERDA program.

(e) Costs of a contractor's independent development are allowable in accordance with FPR 1-15.205-35(e) provided the development also is of benefit to the ERDA program.

(f) and (g) [Reserved]

(h) When the cost of the work involved in segregating the independent research and development which benefits the ERDA program is disproportionate to the amounts involved, an allocable share of those costs may be allowed up to a maximum equal to 5% of the total cost of the contract, but not in excess of $50,000.

(Sec. 105 of the Energy Reorganization Act of 1974 (Pub. L. 93-438).)

M. J. TASHJIAN,
Director of Procurement.

[FR Doc.77-1286 Filed 1-13-77;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 177—FEDERAL, STATE AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO VOCATIONAL STUDENTS AND STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

Special Allowances

Subparagraph (3) of § 177.4(c), Special Allowances, which deals with the payment to lenders of the allowances authorized by section 2 of the "Emergency Insured Student Loan Act of 1969" (Pub. L. 91-95) is amended to provide for the payment of such an allowance for the period October 1, 1976, through December 31, 1976, inclusive.

In light of the directives in the Emergency Insured Student Loan Act of 1969 with respect to the factors that the Secretary of Health, Education, and Welfare is to consider and the officials with whom he is to consult in setting the rate of the special allowance, and since a comment period would cause delay of at least 30 days, following each quarterly 3-month period, it has been determined pursuant to 5 U.S.C. 553 that the solicitation of comment as to the rate of the special allowance for any particular quarter is both impracticable and contrary to the public interest.

The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order Number 11821 and OMB Circular A-107.

Effective Date. Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232 (d)), these regulations have been transmitted to the Congress concurrently with the publication in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

Section 177.4(c)(3)(xxx) is added as follows:

§ 177.4 Payment of interest benefits, administrative cost allowances and special allowance.

* * * * *

(c) *Special allowances.*

* * * * *

(3) Special allowances are authorized to be paid as follows:

* * * * *

(xxx) For the period October 1, 1976, through December 31, 1976, inclusive, a special allowance is authorized to be paid in an amount equal to the rate of 1½ percent per annum of the average unpaid

balance of disbursed principal of eligible loans.

(Sec. 2, 83 Stat. 141.)

(Catalog of Federal Domestic Assistance No. 13.460 Guaranteed Student Loan Program.)

Dated: December 27, 1976.

JOHN W. EVANS,
Acting U.S. Commissioner of Education.

APPROVED: January 7, 1977.
MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

[FR Doc.77-1237 Filed 1-13-77;8:45 am]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—GENERAL PROVISIONS

PART 310—BRIDGE TOLL PROCEDURAL RULES

Effective Period of Orders, Time Limits, Complaints in Modification Proceedings

• *Purpose.* This amendment provides procedures for expediting the handling of proceedings to determine whether rates are just and reasonable by limiting the effective time of orders, leaving the decision of whether to allow modified rates to go into effect within the discretion of the Administrator, and putting time constraints on certain stages of the investigation and decisionmaking. •

The Federal Highway Administration's experience with toll regulations over the past several years indicates the desirability of expediting the regulatory process. In order to accomplish this the Bridge Toll Procedural Rules are being amended.

The first amendment relates to the time period for which an order setting a toll rate is effective. The amendment allows the Administrator, with certain exceptions, to make the order effective for anywhere from 2 to 3 years depending on the particular case. An order for less than 2 years would have either of two undesirable results. It could tend to increase the number of proceedings as complaints would be received as soon as an order became ineffective or it could discourage potential complainants who may not desire to invest the time and money necessary to support their positions with the knowledge that their efforts would only result in a reduction for a short period of time. The bridge toll owner is protected from emergency or exceptional circumstances by his ability to petition for modification. An order effective for more than three years, on the other hand, will be based on data and projections that will probably be unreliable because of fluctuation in the economy and traffic flow. So many factors are involved that it is difficult to make projections very far in advance.

The second amendment changes the toll modification rules by deleting that provision which stayed the effective date of the proposed modified order if one complaint was filed. Recent cases have shown that occasionally frivolous complaints are received. It was, therefore, determined that the matter of allowing the proposed rate to pass into effect should be left solely to the Administrator. A provision has been added, however, which requires the Administrator to consider all complaints that have been received before he makes his decision. In this way legitimate complaints will continue to have an effect in staying the proposed rate.

In order to accelerate the decisionmaking process, the Administrator has set certain time limits on actions taken by himself and his staff. These time limits should, with cooperation from the parties in providing information, significantly reduce the time-consuming decisionmaking process.

These amendments relate to pleading and practice before the Federal Highway Administration. Notice and comment are therefore unnecessary.

In consideration of the foregoing, 49 CFR Part 310 is amended as follows:

1. 49 CFR 310.4a(g) is revised to read as follows:

§ 310.4a Modification of orders setting toll rates.

* * * * *

(g) The proposed toll rate shall become effective 60 days after the publication of the Federal Register notice unless the Administrator orders otherwise. In considering whether to allow the rates to go into effect under this section, the Administrator shall consider any complaints submitted under § 310.3.

2. 49 CFR 310.5 is amended by adding the following sentence to the end of the text as follows:

§ 310.5 Bridge toll investigation.

* * * The investigation shall be concluded within 90 days after receipt of the response to the complaints. This time period shall be extended to 45 days after the receipt of additional information requested from the bridge owner under this section when such request has been made during the first 60 days following receipt of the response to the complaint. All requests for information issued by the investigation staff shall be answered within 45 days.

3. 49 CFR 310.6 is amended by adding the following sentence to the end of the text as follows:

§ 310.6 Informal conferences.

* * * Such informal conferences shall, if needed, be convened within 60 days after the conclusion of the investigation.

4. 49 CFR 310.7 is amended to read as follows:

§ 310.7 Initial determination.

Within 30 days after the conclusion of the investigation, or within 30 days after the receipt of the transcript of the last informal conference, if any such conferences are held, the Administrator determines whether there are sufficient grounds for adjudication. If he determines that no such grounds exist, he then dismisses the proceeding. If he determines that grounds for formal adjudication exist, he then, as soon as possible, issues an order appointing an administrative law judge, or reserving the hearing to himself, and directing that either a public hearing under this Subpart or a hearing by affidavit under Subpart B be held. An appropriate order is then served on the parties. All subsequent regulations that refer to the "administrative law judge" shall also mean the Administrator.

5. 49 CFR 310.13 is revised to read as follows:

§ 310.13 Administrator's decision.

(a) Within 90 days of the receipt of the administrative law judge's recommended decision, the Administrator may adopt or reject the administrative law judge's recommended findings of fact, conclusions of law, and order in whole or in part. He may also remand proceedings to the administrative law judge with instructions for further proceedings as he deems appropriate. If he rejects the recommended decision and no further hearings are ordered, he then issues a final order disposing of the proceeding and serves it on the parties.

(b) If the Administrator has presided over the hearing, he shall within 150 days after receipt of briefs issue a final order disposing of the matter. The order shall be served on all parties.

6. 49 CFR Part 310 is amended by adding a new section as follows:

§ 310.16 Effective period of orders setting toll rates.

The administrative law judge in his recommended decision and the Administrator in his final decision shall state the length of time the order will be in effect. The effective time, which shall be measured from the date the toll rate ordered goes into effect, shall not be less than 2 nor more than 3 years. The effective time of an order may be extended or reduced only in extraordinary or emergency circumstances. Requests for extension or reduction of the effective time shall be by motion to the Administrator. When a motion is made, the Administrator may order such other proceedings under these rules as he deems appropriate before he makes a decision.

(Sec. 133(b), Pub. L. 93-87, 87 Stat. 267 (23 U.S.C. 526(a)); Sec. 2, 6 Pub. L. 92-434, 86 Stat. 731, 732 (33 U.S.C. 535, 535(d).)

Effective date: This amendment takes effect on January 14, 1977.

Issued on: January 11, 1977.

NORBERT T. TIEMANN,
Administrator.

[FR Doc.77-1348 Filed 1-13-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. 241]

PART 1033—CAR SERVICE

Cars for Shippers' Exclusive Use [Rule 16]; Order

INVESTIGATION OF ADEQUACY OF RAILROAD FREIGHT CAR OWNERSHIP, CAR UTILIZATION, DISTRIBUTION, RULES AND PRACTICES; (MODIFICATION OF CAR SERVICE RULE 16)

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 28th day of December 1976.

It appearing, That in the report herein, 335 I.C.C. 264, decided August 21, 1969, as modified in 335 I.C.C. 874, Car Service Rules were prescribed for mandatory observance, including rule 16 concerning the assignment of cars;

It further appearing, That by petition filed on May 5, 1976, the Association of American Railroads seeks modification of the said Car Service Rule 16, whereby the present 10-day notice requirement before a car can be released from an assignment would be amended so as to require only 1 day's written notice; and that other modifications be made for purposes of clarification and efficiencies in assignment of cars; and that said petition was served upon all parties to this proceeding; and that no replies thereto have been received;

And it further appearing, That on the date hereof, the Commission entered its report on further consideration finding that the petitioner's proposed modification of paragraph (A)(3) of rule 16 is unacceptable and requires further modification by the Commission for clarification purposes and that modification of paragraphs (C) and (D) is also warranted; and that the proposed modifications as amended will be in the overall public interest; therefore,

It is ordered, That the said Car Service Rule 16, set forth in appendix G to the report, 335 I.C.C. 264, at pages 353–354, be, and it is hereby, modified, effective January 31, 1977, by substituting in lieu of rule 16, paragraphs (a)(3), (c), and (d) the following:

§ 133.16 Cars for shippers' exclusive use.

(a) * * *

(3) When cars are assigned in accordance with this Rule, they shall remain and be treated as assigned cars until the shipper, originating road haul carrier(s), pool operator or owning railroad serves notice on each of the remaining parties in writing at least one (1) day in advance that such assignment is modified or cancelled.

* * * * *

(c) The present and future assignment by a carrier of specific cars for the exclusive use of a shipper at a particular point shall be reported by such carrier to the Operating-Transportation Division of the Association of American Railroads by car initial, number, car type code and specific assignment. Each carrier assigning such cars shall advise the Operating Transportation Division of the Association of American Railroads of any change in assignments not later than the last working day of the month in which change occurred, except when a change in assignment occurs on the last two days of the month, then notice of change shall be as soon as possible, but not more than 5 days after any change in assignment. The Operating-Transportation Division of the Association of American Railroads will maintain a current record of cars assigned, and distribute such information to car owners assigning cars to a specific shipper at each location, as well as to the roads originating traffic from such assignment, including originating switching line serving the shipper involved. The foregoing provisions of this paragraph shall not apply when all cars assigned to the exclusive use of a shipper at a particular point are system cars of a single road haul carrier serving the shipper at such point.

(d) Assigned cars are exempt from Car Service Rules 1 and 2.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1297 Filed 1-13-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That the Southern Sea Otter Is A Threatened Species

The Director, U.S. Fish and Wildlife Service (hereinafter the Director and the Service, respectively) hereby issues a Rulemaking pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 884; hereinafter the act) which determines that the Southern Sea Otter (*Enhydra lutris nereis*) is a threatened species.

BACKGROUND

On May 22, 1975, the Fund for Animals, Inc. requested the Service to list as endangered species, pursuant to the Act, 216 taxa of plants and animals which appear on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which were not already on the U.S. List of Endangered and Threatened Wildlife. One of these 216 taxa was the Southern Sea Otter (*Enhydra lutris nereis*). Acting on this request, the Service published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44329) a Proposed Rulemaking that would propose all 216 taxa to be endangered species under the Act. In the FEDERAL REGISTER of June 14, 1976 (41 FR 24062–24067) the Service issued a Final Rulemaking determining 159 of the 216 taxa to be endangered species. One of the remaining taxa was determined to be neither endangered nor threatened, and reasons were given for delaying determinations on the other 56 taxa.

One of the species which was not acted upon in the June 14, 1976, Rulemaking was the Southern Sea Otter. It was stated at that time that a considerable amount of data had been received which was still being analyzed. Although most responses had favored listing the species as Endangered, the State of California opposed such a measure and submitted a large amount of supporting data. In contrast, several conservation groups submitted substantial evidence to support their contention that the Southern Sea Otter was Endangered and should be determined as such pursuant to the Act. In view of the quantity and complexity of the information received, the Service stated that a determination on the Southern Sea Otter would be delayed.

Another problem which arose in connection with the Southern Sea Otter concerned its proper taxonomic status. This Sea Otter was long treated as a subspecies, *Enhydra lutris nereis*, distinct from the Northern Sea Otter in Alaskan waters (*Enhydra lutris lutris*). Recently, some parties have argued that the Southern Sea Otter is not a separate subspecies, is only a population of *Enhydra lutris lutris*, and, since the Northern Sea Otter is relatively common, should not be considered as an endangered or threatened species. Other parties have presented evidence that the Southern Sea Otter is a distinct subspecies. This question actually is not relevant to the matter at hand, because sections 3 and 4 of the Act allows the listing of populations of species in portions of their range, as well as entire species and subspecies. Since the Southern Sea Otter does form a significant population, it can be treated independently under the Act, regardless of its taxonomic status. The Service decided, however, to utilize the subspecific designation *Enhydra lutris nereis* in this rulemaking, though this decision had no connection with the decision to list as threatened.

All pertinent data, comments, and recommendations now have been analyzed, and the Service is issuing this Final Rulemaking pertaining to the Southern Sea Otter.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the FEDERAL REGISTER prior to adding any species to the List of Endangered and Threatened Wildlife. In the September

26, 1975, Proposed Rulemaking (40 FR 44329) all interested persons were invited to submit written comments to the Service, which would be considered if received no later than October 28, 1975. This was a clerical error which was corrected on October 22, 1975 (40 FR 49347), when the comment period was extended to November 24, 1975.

As stated in the Final Rulemaking of June 14, 1976 (41 FR 24062), 291 responses were received during the comment period that dealt specifically with the Southern Sea Otter. Of these responses, 289 favored listing as Endangered. In addition, many hunderds of persons signed petitions supporting the Endangered classification. Only two parties opposed listing, one being the State of California, and the other being a university professor whose reasons largely paralleled those of the State.

The State of California's response, as provided by the Director of the Department of Fish and Game on November 21, 1975, consisted of a two-page letter and approximately 90 pages of excerpts from the two large volumes of data sent in support of the State's application for waiver of the moratorium of the Marine Mammal Protection Act. The letter specifically requested that the Southern Sea Otter not be declared Endangered or Threatened, because it met none of the five listing criteria in section 4(a) of the Act. The supporting data included some information on taxonomy and other subjects not directly relevant to the listing question. A history of the California Sea Otter population was provided, in which it was suggested that there may have been about 16,000 Sea Otters in California waters prior to 1914 when exploitation for the fur trade reduced the population to about 50 animals off Point Sur. With subsequent protection the population increased to an estimated 1,760 animals by 1975 when it occupied 161 linear miles of coastline from Sunset State Beach to Point Buchon. The population was considered to be at an optimum level, and continued expansion was thought probable. No major natural or man-caused threats to the overall population were recognized. Deaths because of shooting and collision with boats were said to occur, but not to be a significant problem. There was no evidence that pollution or oil spills had ever caused the death of a Sea Otter. The potential major effects of an oil spill were acknowledged, but it was held extremely unlikely that such a spill could wipe out the entire Sea Otter population.

The largest response favoring listing of the Southern Sea Otter as Endangered came from the Friends of the Sea Otter, a private organization in Big Sur, California. This response, dated November 20, 1975, included a 19-page letter and 16 supporting attachments. Again, some irrelevant information on taxonomy and other subjects was covered. Although it was recognized that the Southern Sea Otter population had increased since 1914, it was suggested that this population now had stabilized and that actual counts showed the presence of only about 1,000 Sea Otters in each year since 1969. Even if the higher estimates of the California Department of Fish and Game were accepted, the population still has to be considered small and vulnerable. Among the cited threats to the population was a possible loss of genetic diversity, caused by the former severe numerical reduction, which could adversely affect the adaptability of the existing animals. Chemical, bacteriological, and metal pollution was held to be increasing in the range of the Sea Otter. The possibility of a major oil spill that could destroy much of the population was considered a serious possibility. Direct killing by man was said to be occurring and to be a matter of growing concern as human population pressures increased.

Another response from the California Chapter of the Sierra Club gave many of the same arguments as the Friends of the Sea Otter, but also emphasized the issue of competition between man and the Sea Otter for food resources. Heavy sport and commercial pressures, in conjunction with rapid human population growth, were said to have depleted the shellfish resources upon which the Sea Otter depends, and to have contributed to the ill feeling that some persons have toward the Sea Otter.

Among the other responses supporting endangered status for the Southern Sea Otter were letters from nine professors or researchers, in biological science fields, at California universities or research stations, and the Director of the California Academy of Sciences. These letters expressed concern about such factors as potential oil spills, pollution, direct killing by man, and the loss of genetic diversity by the Southern Sea Otter population.

In a letter of June 1, 1976, the Marine Mammal Commission provided its recommendations on the matter to the Fish and Wildlife Service.

The Commission stated that while present population estimates were debatable, it was thought that the Sea Otter was increasing in range and numbers and would continue to do so, if permitted. The Sea Otter thus was not considered to be endangered, but several threats were held to be problems, the most serious being the potential impact of oil spills. It was suggested that a large number of animals could be jeopardized by a major oil spill. The Commission therefore recommended that the Southern Sea Otter be listed as threatened.

Conclusion

After a thorough review and consideration of all available information, the Director has determined that the Southern Sea Otter is not endangered, but is threatened as defined in Section 3 of the Act. Section 4(a) of the Act states that a species may be determined to be endangered or threatened because of any of five factors. These factors, and their applicability to the Southern Sea Otter are discussed below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—There seems no question that the range of the Southern Sea Otter is presently much reduced from what is was in historical time. The original range extended at least 1,500 miles from Morro Hermoso on the Pacific Coast of Baja California, to the Strait of Juan de Fuca, separating the Olympic Peninsula of Washington from Vancouver Island, British Columbia. The present range covers only about ten percent of this area. Recent information, supporting recognition of the Southern Sea Otter as a distinct subspecies, suggests that the subspecific line should have been drawn in the vicinity of Prince William Sound, Alaska, which would have given the subspecies a range of about 2,700 miles. Although small groups of Sea Otters derived from Alaska waters have been introduced at several points off the coast of southeastern Alaska, British Columbia, Washington, and Oregon, the original stock that once occupied the region from southeastern Alaska to Baja California now is represented only by the group off the central California coast. The remaining habitat and population is potentially jeopardized by oil spills, and possibly by pollution and competition with man. The fact that less than 2,000 (possibly as few as 1,000) otters occupy the present range, make the species particularly vulnerable to any sort of disruption.

Nonetheless, there also seems no doubt that the Southern Sea Otter has made a comeback from a formerly much more dangerous status. The population now seems to be relatively dense in the area that is occupied, and there is no known immediate problem that could result in extinction. An endangered classification, therefore, is not warranted at this time.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—The original decline in Sea Otter populations was caused largely by commercial exploitation. Through State, Federal, and International protection this factor is not now a problem. Illegal killing does occur, but probably is not a threat to the overall population.

3. *Disease or predation.*—These factors cannot be shown to constitute a serious threat at present.

4. *The inadequacy of existing regulatory mechanisms.*—Existing Federal and State laws probably are adequate to protect the Sea Otter from direct taking. Habitat protection, however, is not adequate and would be improved through application of Section 7 of the Act.

5. *Other natural or manmade factors affecting its continued existence.*—It has been suggested, though not proven, that the former severely reduced state of the Southern Sea Otter may have greatly restricted the genetic diversity of the population, leaving it less adaptable in confronting potential problems.

A major spill of oil from a tanker in the waters in the vicinity of the range of the Southern Sea Otter is probably the most serious potential threat to the species. There seems little question that oil would be harmful to these animals,

and, indeed, they are more susceptible to this problem than most species. Unlike other marine mammals they lack an insulating layer of blubber and depend entirely on their thick air-filled fur for protection from chill waters. Should the fur become contaminated with oil and matted down it would lose its insulating properties, resulting in overexposure and death.

There are major oil unloading facilities at Moss Landing, near the present northern edge of the Sea Otter's range, and at Estero Bay, near the southern edge of this range. Currently, these terminals are used by tankers of 50,000 DWT. Proposals are pending for an additional 120,000 DWT tanker mooring terminal at Moss Landing, and a 70,000 DWT mooring, with provisional extension to moor 125,000 DWT tankers carrying light loads under optimum ocean conditions, at Estero Bay. Increasing shipments of foreign oil, and the expected large-scale movement of oil from the southern terminal of the Alaska Pipeline, probably will result in a considerable increase of oil tanker traffic in and near the range of the Sea Otter.

There is some question regarding the likelihood of a major oil spill and the extent to which it could affect the overall Sea Otter population. Although it does not appear probable that the entire population could be wiped out by a single spill, a significant portion thereof could be eliminated, especially under certain weather and sea conditions. Even though there may be surviving groups, these could be so reduced in number, disrupted, and vulnerable to further problems that they might justifiably be termed Endangered. Therefore, while the chances of an oil spill cannot be predicted, the possibility of such a disaster and its consequences to the Sea Otter population, coupled with the prospects for increasing oil activity in the area, contributes substantially to the decision to list the population as threatened.

Effects of the Rulemaking

The effects of this determination and this rulemaking include, but are not necessarily limited to those discussed below.

No special regulations, as provided for by section 4(d) of the Act in the case of threatened species, are deemed necessary or advisable for the protection of the Southern Sea Otter. The general prohibitions and exceptions concerning the Threatened Species are published in Title 50, § 17.31, of the Code of Federal Regulations as follows:

Subpart D—Threatened Wildlife

§ 17.31 *Prohibitions.*

(a) Except as provided in Subpart A of this Part, or in a permit issued under this Subpart, all of the provisions in § 17.21 (a) through (c)(4) shall apply to threatened wildlife.

(b) In addition to any other provisions of this Part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take any threatened wildlife to carry out scientific research or conservation programs.

(c) Whenever a special rule in §§ 17.40 to 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions.

The above regulations refer to § 17.21 of Title 50 which is reprinted below:

Subpart C—Endangered Wildlife

§ 17.21 *Prohibitions.*

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c)(2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take Endangered Species, for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in: (i) The death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may posses, deliver, carry transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

Section 17 of the Endangered Species Act provides that, except as otherwise provided in the Act, none of its provisions will take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 et seq.

The Marine Mammal Protection Act is more restrictive in circumstances where a "taking" requires a permit. Under the Endangered Species Act, all proposed takings of Threatened Species, except those by persons covered by 50 CFR 17.31(b), would have to satisfy the general permit requirements of 50 CFR 17.32, which lists several acceptable purposes. Permit takings under the Marine Mammal Protection Act are more restrictive because section 101(a)(3)(B) states that except for scientific research purposes, no permit may be issued during the moratorium (directed by section 101(a) of the Marine Mammal Protection Act) which would authorize the taking of a marine mammal listed under the Endangered Species Act. It must be noted, furthermore, that this restriction applies only when the taking must be done pursuant to a permit and only

when the moratorium has not been waived.

In circumstances where a permit is not required for a taking, the Marine Mammal Protection Act is also more restrictive than the Endangered Species Act, and, therefore, the requirements under the Marine Mammal Protection Act would also prevail in that situation. Section 109(a)(4) of the Marine Mammal Protection Act provides that a State or local government official or employee may "in the course of his duties as an official or employee, (take) a marine mammal in a humane manner if such taking (A) is for the protection or welfare of such mammal or for the protection of the public health and welfare, and (B) includes steps designed to assure the return of such mammal to its natural habitat." Section 18.22 of 50 CFR makes express that no permit is required for such taking.

On the other hand 50 CFR 17.31(a) under the Endangered Species Act allows non-permit takings of listed Threatened species pursuant to the terms of § 17.21. Section 17.21(c)(3) provides that any employee or agent of the Fish and Wildlife Service, any other Federal land management agency, the National Marine Fisheries Service or of a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to: (i) Aid a sick, injured or orphaned specimen; or (ii) Dispose of a dead specimen; or (iii) Salvage a dead specimen which may be useful for scientific study.

50 CFR 17.31(b) provides:

(b) In addition to any other provisions of this Part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating under a Cooperative Agreement with the Service or with the National Marine Fisheries Service, in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take any threatened wildlife to carry out scientific research or conservation programs.

EFFECT ON FEDERAL AGENCIES

The determination set forth in this Rulemaking makes the Southern Sea Otter eligible for the provisions of section 7 of the Act which reads as follows:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Although no Critical Habitat yet has been determined for the Southern Sea Otter, the other provisions of section 7 are applicable. The Service now is collecting data relative to preparing a proposed determination of Critical Habitat for the Southern Sea Otter, and all persons with pertinent information are invited to send the same to the Director.

EFFECTIVE DATE

This Rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 884). The amendments will become effective on February 11, 1977.

Dated: January 3, 1977.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, Part 17, Subpart B, § 17.11 Title 50 of the Code of Federal Regulations, is amended as set forth below:

In § 17.11 add the following:

§ 17.11 Endangered and threatened wildlife.

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
Southern sea otter..	*Enhydra lutris nereis*..	NA	California.....	Entire.....	T	.....	NA

[FR Doc.77-1268 Filed 1-13-77;8:45 am]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

PART 602—GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

Extension of Period for Public Comment Upon Interim Regulations

Interim Final Regulations were published in the FEDERAL REGISTER September 15, 1976 (41 FR 39436) to provide the Regional Fishery Management Councils with uniform standards for Council operations and guidelines for developing management plans pursuant to Public Law 94-265. Comments from interested parties, Regional Councils and governmental agencies were requested by December 2, 1976. Two Regional Councils have requested additional time for review. Therefore, the period for public comment is extended to February 1, 1977. All submissions received by the Director, National Marine Fisheries Service, Washington, D.C., 20235, on or before that date will be considered prior to the publication of final regulations.

Issued in Washington, D.C. and dated January 10, 1977.

ROBERT W. SCHONING,
Director, National
Marine Fisheries Service.

[FR Doc.77-1264 Filed 1-13-77;8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY

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

Delegation of Authority

On October 15, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 45577) for the purpose of amending or revoking current regulations on prohibited acts relating to the National Forest System, and to provide for the delegation of authority to specified forest officers.

Interested persons were given until November 29, 1976, to submit comments. No comments were received on the proposed change in 7 CFR 2.60(b)(1). Accordingly, the proposed language is adopted without change. This change is related to changes in 36 CFR, Chapter II. Comments received on that title are discussed in the preamble to an amendment which is published concurrently.

Title 7 CFR 2.60(b)(1) is amended to read as follows:

§ 2.60 Chief, Forest Service.

* * * * *

(b) Reservations. The following authorities are reserved to the Assistant Secretary for Conservation, Research, and Education.

(1) The authority to issue regulations, except as provided in 36 CFR 261.70.

* * * * *

(80 Stat. 379, 5 U.S.C. 301.)

JOHN A. KNEBEL,
Secretary.

JANUARY 10, 1977.

[FR Doc.77-1302 Filed 1-13-77;8:45 am]

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

EGGS AND POULTRY

Miscellaneous Amendments

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), and the Egg Products Inspection Act (84 Stat. 1620 et seq., 21 U.S.C. 1031–1056), the U.S. Department of Agriculture hereby amends the Regulations Governing the Voluntary Inspection and Grading of Egg Products (7 CFR Part 55); the Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 56); the Regulations Governing the Inspection of Eggs and Egg Products (7 CFR Part 59); and the Regulations

Governing the Voluntary Grading of Poultry Products and Rabbit Products and U.S. Classes, Standards, and Grades with Respect Thereto (7 CFR Part 70).

STATEMENT OF CONSIDERATIONS

The primary purpose of these amendments is to remove an unnecessary charge for service which will now be covered in another manner. The affected regulations currently provide that for travel expenses and other charges incurred while rendering grading service, 10 percent of the total expenses shall be added to cover administrative costs of the Department. A recent adjustment in the rate for services was calculated to cover such administrative costs so the additional 10 percent is no longer necessary. Therefore, §§ 55.530, 56.49, and 70.75 are revised to eliminate the requirement of the additional 10-percent charge, and §§ 55.560(a)(4), 56.52(a)(4), 56.54(a)(3), 70.76(a)(3), and 70.77(a)(4) are eliminated.

Other amendments update the affected regulations by removing obsolete material and clarifying certain sections. Some amendments are for uniformity.

At one time, the Department provided shell egg sampling service by employees of the Department or other personnel authorized by the Secretary to only perform this service. The sampled product was then graded by official graders. Now, sampling is an integral part of the official grading function and is done by the USDA graders who also grade the product. Accordingly, the definitions for "Sampler" and "Sampling report" have been eliminated from section 56.1 and the definition of "Office of grading" has been amended to delete reference to "the sampler." In this same section of the egg grading regulations, the definition of "National supervisor" has been amended to indicate that the reference to "the poultry grading service" should read "the shell egg grading service." Since "sampler" and "sampling service" are no longer appropriate terms, they have been deleted whenever they appear in the regulations being amended. The affected sections are 55.500, 56.13, 56.15, 56.16, 56.20, 56.21, 56.24, 56.30, 56.31, and 56.45.

A definition of "Quality assurance inspector" has been added to the shell egg grading regulations to replace the present definition of "Supervisor of packaging." The new definition more accurately describes the functions of the company personnel who have been authorized by the Department to perform quality assurance work, including the supervision of packaging.

Accordingly, the wording "Supervisor of packaging" has been changed to "Quality assurance inspector" in §§ 56.11, 56.35, and 56.39. Also, in §§ 56.13, 56.16, and 56.30, references to "Supervisor of packaging" have been deleted since these personnel are not licensed or authorized to report violations, nor will the newly defined "Quality assurance inspectors" be licensed or be authorized to report violations.

Paragraph (a)(3) of § 56.36 provides that in official identification, the plant number preceded by the letter "P" may appear in the grademark or elsewhere on the packaging material. For the sake of uniformity, this paragraph has been revised to require the plant number only on the cartons or other packaging material and not in the grademark.

Section 56.38, "Rescindment of approved labels," has been deleted from the shell egg grading regulations and similar requirements for egg products in §§ 55.330 and 59.417 have also been deleted. The national office has a coding system for the review and control of labels. Authority for the approval of labels bearing codes issued by the national office is delegated to the plant grader or inspector where the labels are used. It is no longer necessary to notify the national office (Administrator) when labels are obsolete.

Section 56.42, which contains the requirements for the AA quality control program for eggs, has been amended by deleting paragraph (a)6 and the words "and distribution" from paragraph (a)7. Temperatures of eggs at the retail level are controlled in many cases by State or municipal laws and do not need to be stated in the Federal regulations.

Some ambiguous wording has been removed in §§ 55.560, 56.52, and 56.54 and is clarified in revised paragraphs (b)(3)(iv) in each of these sections to make direct reference to conditions under which grading service could be suspended, withdrawn, or terminated. This is consistent with similar changes made previously in Part 70.

Sections 56.4(b) and 70.11 provide that continuous grading service in an official plant may be rendered only when a majority of the grader's time is utilized each month in performing grading for quality on the basis of the official standards. These sections are being eliminated since this requirement could restrict quality control services the grader could perform relative to further processed items prepared from graded product, specification work, and other services.

Other minor changes for clarification are as follows: A disclaimer provision for the service has been removed from §§ 55.170, 56.27, and 59.148, and more appropriately located in §§ 55.10, 56.3, and 59.10, respectively. The word "continuous" has been removed from the title of § 56.21 since both continuous and noncontinuous services are covered. Also, in paragraph (b) of this section, the word "area" has been corrected to read "regional" which is now the term for the geographically located field offices. In § 56.210(g), the definition of "Bloody white" has been clarified. In § 55.90, the word "officials" has been corrected to "official" and in §§ 55.80 and 59.119, the word "activities" has been corrected to "activity." Deletion of some paragraphs in the affected regulations has required the redesignation of other paragraphs.

The amendments are as follows:

PART 55—VOLUNTARY INSPECTION AND GRADING OF EGG PRODUCTS

1. Section 55.10 is revised to read:

§ 55.10 Authority.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for a limited period any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

§ 55.80 [Amended]

2. In § 55.80, the word "activities" is changed to read "activity."

§ 55.90 [Amended]

3. In § 55.90, paragraph (a)(3) is amended by changing the word "officials" to read "official."

§ 55.170 [Amended]

4. In § 55.170, the last sentence is deleted.

§ 55.330 [Amended]

5. In § 55.330, paragraph (c) is deleted and paragraph (d) is redesignated (c).

6. In § 55.500, paragraph (a) is revised to read:

§ 55.500 Payment of fees and charges.

(a) Fees and charges for any service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and §§ 55.510 to 55.560, both inclusive. If so required by the grader or inspector, such fees and charges shall be paid in advance.

* * * * *

7. Section 55.530 is revised to read:

§ 55.530 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the Department in connection with rendering grading service. Such charges shall include the costs of transportation, per diem, shipping containers, postage, and any other expenses. Expenses are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be $.50 per certificate.

8. In § 55.560, paragraphs (a)(4) and (b)(3)(v) are deleted, paragraph (a)(5) is redesignated as (a)(4), and paragraph (b)(3)(iv) is revised to read:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(b) Other provisions * * *

(3) * * *

(iv) Action taken by AMS pursuant to the provisions of §§ 55.180 or 55.200.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

9. In § 56.1, the definitions for "Sampler," "Sampling report," and "Supervisor of packaging" are deleted, a new definition of "Quality assurance inspector" is added, and the definitions for "National supervisor" and "Office of grading" are revised to read:

§ 56.1 Meaning of words and terms defined.

* * * * *

"National supervisor" means (1) the officer in chare of the shell egg grading service of the Agricultural Marketing Service, and (2) such other employees of the Service as may be designated by him.

* * * * *

"Office of grading" means the office of any grader.

* * * * *

"Quality assurance inspector" means any designated company employee authorized by the Secretary to supervise the labeling, dating, and lotting of officially graded shell eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

* * * * *

10. In § 56.3, paragraph (a) is revised to read:

§ 56.3 Administration.

(a) The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

* * * * *

§ 56.4 [Amended]

11. In § 56.4, paragraph (b) is deleted and paragraph (c) is redesignated (b).

12. The center head preceding § 56.10 is revised to read: "Licensed Graders."

13. Section 56.11 is revised to read:

§ 56.11 Authorization to perform limited grading services.

Any person who is employed by any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the "U.S. Standards for Quality of Individual Shell Eggs," with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a "quality assurance inspector" in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

14. Section 56.13 is revised to read:

§ 56.13 Cancellation of license.

Upon termination of his services as a grader, each licensee shall surrender his license immediately for cancellation.

15. Section 56.15 is revised to read:

§ 56.15 Political activity.

All graders are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees, and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

16. Section 56.16 is revised to read:

§ 56.16 Identification.

All graders shall each have in possession at all times, and present upon request while on duty, the means of identification furnished by the Department to such person.

17. The center head preceding § 56.20 is revised to read: "Application for grading."

18. In § 56.20, the title and text are revised to read:

§ 56.20 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

19. In § 56.21, the title and text are revised to read:

§ 56.21 How application for service may be made; conditions of service.

(a) *Noncontinuous grading service on a fee basis.* An application for any noncontinuous grading service on a fee basis may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If the application for grading service is made orally, the office of grading or the grader with whom such application is made, or the Administrator, may require that the application be confirmed in writing.

(b) *Continuous grading service on a resident basis or continuous grading service on a nonresident basis.* An application for continuous grading service on a resident basis or for continuous grading service on a nonresident basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

§ 56.24 [Amended]

20. In § 56.24, the first 14 words in the text are amended to read: "An application for grading service may be rejected by the Administrator"

§ 56.27 [Amended]

21. In § 56.27, the last sentence is deleted.

22. Section 56.30 is revised to read:

§ 56.30 Report of violations.

Each grader shall report in the manner prescribed by the Administrator, all violations and noncompliances under the Act and this part of which such grader has knowledge.

23. In § 56.31, paragraph (a)(1)(i) is revised to read:

§ 56.31 Debarment.

(a) * * *

(1) * * *

(i) The making or filing of an application for any grading service or appeal service;

* * * * *

24. In § 56.35, paragraph (a) is revised to read:

§ 56.35 Authority to use, and approval of official identification.

(a) *Authority to use official identification.* Authority to officially identify product graded pursuant to this part is granted only to applicants who make the services of a grader or quality assurance inspector available for use in accordance with this part. Packaging materials bearing official identification marks shall be approved pursuant to §§ 56.35 to 56.39, inclusive, and shall be used only for the

purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official identification may result in cancellation of the approval and denial of the use of labels or packaging materials bearing official identification or denial of the benefits of the Act pursuant to the provisions of § 56.31.

* * * * *

25. In § 56.36, paragraph (a)(3) is revised to read:

§ 56.36 Information required on and form of grademark.

(a) * * *

(3) The plant number of the official plant preceded by the letter "P" must be shown on each carton or packaging material.

* * * * *

§ 56.38 [Deleted]

26. Section 56.38 is deleted.

27. In § 56.39, the title and text are revised to read:

§ 56.39 Quality assurance inspector required.

The official identification of any graded product as provided in §§ 56.35 to 56.43, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official identification.

28. In § 56.42, paragraph (a)(6) is deleted, and paragraph (a)(7) is redesignated (a)(6) and is revised to read:

§ 56.42 Requirements for eggs packaged under Fresh Fancy Quality grademark or AA grademark as shown in Figures 4 and 5 of § 56.36.

(a) * * *

(6) Periodic checks to determine the adequacy of the production programs shall be made by governmentally employed graders.

* * * * *

29. In § 56.45, paragraph (a) is revised to read:

§ 56.45 Payment for fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 56.46 to 56.54, both inclusive; and, if so required by the grader, such fees and charges shall be paid in advance.

* * * * *

30. Section 56.49 is revised to read:

§ 56.49 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the service in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses. Expenses are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be $.50 per certificate.

31. In § 56.52, paragraphs (a)(4), (a)(7) [Reserved], and (b)(3)(v) are deleted, paragraphs (a)(5) and (a)(8) are redesignated (a)(4) and (a)(5), respectively, and paragraph (b)(3)(iv) is revised to read:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(b) Other provisions. * * *

(3) * * *

(iv) Action taken by AMS pursuant to the provisions of § 56.31.

32. In § 56.54, paragraphs (a)(3) and (b)(3)(v) are deleted, paragraph (a)(4) is redesignated (a)(3), and paragraph (b)(3)(iv) is revised to read:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(b) Other provisions. * * *

(3) * * *

(iv) Action taken by AMS pursuant to the provisions of § 56.31.

33. In § 56.210, paragraph (g) is revised to read:

§ 56.210 Terms descriptive of the white.

* * * * *

(g) *Bloody white.* An egg which has blood diffused through the white. Eggs with bloody whites are classed as loss. Eggs with blood spots which show a slight diffusion into the white around the localized spot are not to be classed as bloody whites.

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS

34. Section 59.10 is revised to read:

§ 59.10 Authority.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act, and this part. The Administrator may waive for a limited period any particular provisions of the regulations to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to maintain full compliance with the spirit and intent of the regulations. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

§ 59.119 [Amended]

35. In § 59.119, the word "activities" is changed to read "activity."

§ 59.148 [Amended]

36. In § 59.148, the last sentence is deleted.

§ 59.417 [Amended]

37. In § 59.417, paragraph (c) is deleted and paragraph (d) is redesignated (c).

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

§ 70.11 [Deleted]

38. Section 70.11 is deleted.

39. Section 70.75 is revised to read:

§ 70.75 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the Service in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses. Expenses are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be $.50 per certificate.

§ 70.76 [Amended]

40. In § 70.76, paragraph (a)(3) is deleted and paragraph (a)(4) is redesignated (a)(3).

§ 70.77 [Amended]

41. In § 70.77, paragraph (a)(4) is deleted and paragraphs (a)(5), (6), and (7) are redesignated (a)(4), (5), and (6), respectively.

The amendments are primarily administrative. They clarify certain sections, remove obsolete material, and remove unnecessary restrictions. They do not impose additional burdens on the public. It is especially important and to the advantage of the users of the service to remove the additional 10-percent charge added to total expense charges for grading service at the earliest possible date which will be the next accounting period beginning January 16, 1977.

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

Issued at Washington, D.C. January 11, 1977.

Effective: January 16, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1243 Filed 1-13-77;8:45 am]

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

[Amdt. 25]

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Reimbursement Payments

On July 23, 1976 a proposed amendment was published (41 FR 30347) for public comment to clarify provisions for reimbursement payments. Twenty-two

comments were received, several of which were favorable.

All of the comments received concerning the proposed amendment have been carefully considered. All substantive comments and recommendations, together with the resulting changes in the amendment or reasons for not accepting the suggestions, are set forth below:

Comments of twelve of the twenty-two respondents with respect to initial assignment of rates focused primarily upon two concerns: That the regulations were contrary to the intent of the Conference Report which accompanied Pub. L. 94–105 and that the wording of the proposed provision was confusing and vague. Those who felt the amendment was contrary to the Conference Report misinterpreted it to mean that all State and local revenue must be considered by the State agency when assigning Federal rates of reimbursement for general cash-for-food assistance, and believed this would result in the withdrawal of State and local revenue.

The proposed regulation does not require consideration of revenues as such except in the case of free and reduced price lunches. The Department envisions that the level of the School Food Authority's operating balance will ultimately reflect any amount of revenue available for the general support of the school food service over and above normal requirements. Revenue available for general support would include local contributions, including children's payments, local school board support, State assistance provided for all lunches and other contributions.

However, as a part of a State's ongoing financial management system, when initially assigning rates of reimbursement and in any subsequent rate assignments, the State agency must consider the cost of producing a lunch as the base factor. The base factor will then be reduced by: (1) State assistance provided specifically for free and reduced price lunches, (2) An amount equal to the highest reduced price charge to the child, and (3) Any funds which exceed three months operating balance for normal operations. The Department believes that this procedure is consistent with the intent of the National School Lunch Act that reimbursement rates vary between schools on the basis of need, within a maximum rate to be prescribed by the Secretary (sections 8 and 11). Also, it implements the intent of maximum flexibility expressed in the Conference Report that accompanied Pub. L. 94–105: it would not prohibit State or local authorities from designating funds to support the nonneedy child.

Inasmuch as the proposed provision was misinterpreted and found to be confusing and vague to a considerable number of the respondents, the Department has revised the wording.

Thirteen respondents commented adversely on (1) The provision allowing State agencies, and FNSROs where applicable, maximum flexibility in varying general cash-for-food assistance reimbursement rates between schools and School Food Authorities, and (2) The requirement that Federal and State assistance provided specifically for free and reduced price lunches, plus the highest reduced price charge, not exceed the cost of producing a lunch. Primarily, these comments centered upon vague and confusing wording. The Department will retain these provisions, but has clarified the language.

Four respondents opposed the provision requiring State agencies to periodically monitor and adjust reimbursement rates. Criticism was varied, with two objections centered upon the difficulty of monitoring the rates. Consistent with sound program operations, State agencies must initiate a financial management system which, as a minimum, would assure accountability. The Department will retain this provision.

In regard to the requirement that State agencies review operating balances, two respondents indicated that "operating balance" should be defined, while another stated that a time frame should be established for the review. The Department herein has clarified the provisions for review and treatment of the operating balance and will review the need for additional provisions with State agencies.

Accordingly, this part is amended as set forth below:

1. In § 210.2, a new paragraph (n–3) is added to read as follows:

§ 210.2 Definitions.

* * * * *

(n–3) "Revenue" means the value of resources available to operate the lunch service, including cash funds (Federal, State, and local), and the value of goods and services contributed.

* * * * *

2. In § 210.11, paragraphs (e) and (f) are deleted, paragraphs (g) and (h) are redesignated as paragraphs (e) and (f), respectively, and paragraphs (b), (c), and (d) are revised to read as follows:

§ 210.11 Reimbursement payments.

* * * * *

(b) The maximum rates of reimbursement to be made by State agencies, or FNSROs where applicable, to School Food Authorities for general cash-for-food assistance and for special cash assistance shall be prescribed by the Secretary by July 1 of each fiscal year and by January 1 of each fiscal year in the notice of adjustment to the national average payment factors made in accordance with § 210.4(c) of this part. At the beginning of each school year and at the effective date of the other semiannual adjustment, State agencies, or FNSROs where applicable, shall, within these maximum rates of reimbursement, initially assign rates of reimbursement for School Food Authorities or for schools through School Food Authorities at levels based on the anticipated cost of producing a lunch, the anticipated State revenue provided specifically for a free or reduced price lunch, an amount equal to the highest reduced price charge to the child per lunch, and other per lunch revenues available for the general support of the school food service program as reflected in the School Food Authority's operating balance. The assigned rates shall permit reimbursement for the total number of Type A lunches, including reduced price lunches and free lunches, from the general cash-for-food assistance funds and from the special cash assistance funds available under § 210.4 of this part to the State agency, or FNSRO where applicable.

(c) Based on the principles set forth in this section, State agencies, and FNSROs where applicable, shall have maximum flexibility in assigning rates of reimbursement from general cash-for-food assistance funds among schools and School Food Authorities. The State agency, or FNSRO where applicable, shall assign to any school or school food authority the same rate of reimbursement from general cash-for-food assistance funds for the lunches served to children at the full price and for lunches served to children free or at a reduced price. In addition to the assigned rate of reimbursement from general cash-for-food assistance funds, the State agency, or FNSRO where applicable, shall assign rates of reimbursement for free and reduced price lunches from special cash assistance funds, as applicable. The combined rates of reimbursement from general cash-for-food assistance and special cash assistance funds for each free or reduced price lunch are hereinafter referred to as the "per lunch reimbursement". For any school, or School Food Authority, the total of (1) The per lunch reimbursement rates assigned for free and reduced price lunches, (2) State assistance provided specifically for free and reduced price lunches, and (3) In the case of reduced price lunches, an amount equal to the highest reduced price charge to the child per lunch, shall not exceed the per lunch cost of providing a Type A lunch during the school year.

(d) The financial management system of each State agency, or FNSRO where applicable, must positively demonstrate the objective of assigning and adjusting reimbursement rates based on a periodic review of the per lunch cost. The financial management system of each State agency, or FNSRO where applicable, shall demonstrate the reason for variations among schools or School Food Authorities in the assigned rates of reimbursement from general cash-for-food assistance funds and special cash assistance funds for the particular type lunch.

* * * * *

3. Section 210.15 is revised to read as follows:

§ 210.15 Review of operating balances.

Each State agency, or FNSRO where applicable, shall periodically, at least once each school year, review the level

and trend of the operating balances reported by School Food Authorities. If the operating balance exceeds three months normal operating cost, the State agency, or FNSRO where applicable, shall establish and implement a plan of action to reduce prices, improve food quality or take action designed to otherwise improve the food service in the Program. In the absence of any such action, adjustments in the rates of reimbursement shall be made. Evidence of the action taken as a result of the review of excessive balances shall be maintained on file.

NOTE.—Reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date: This amendment shall become effective on January 12, 1977.

Dated: January 12, 1977.

JOHN DAMCARD,
Acting Assistant Secretary.

[FR Doc.77-1396 Filed 1-13-77;8:45 am]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Revisions Reflecting Policy Changes

Basis and purpose. The provisions of this part (7 CFR Part 718) are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et. seq.), to provide for the determination of producer adherence to the requirements specified in program regulations issued by the Agricultural Stabilization and Conservation Service in order for the producer to receive program benefits.

This document is a revision of the rules currently in effect under §§ 718.1 to 718.14 of this part (38 FR 12891). The rules have been rewritten to incorporate changes attributable to policy decisions affecting 1976 and subsequent crop years. Substantial changes are as follows:

Section 718.2 has been rewritten to redefine certain terms, include definitions for additional terms, and remove definitions that are no longer applicable.

Section 718.3 has been rewritten to provide authority for the county committee to enter a farm for making other program determinations in addition to acreage determinations.

Section 718.4 has been rewritten to provide authority for the county committee to make other program determinations in addition to acreage determinations, to remove State committee authority for recommending a different percentage for the standard perimeter deduction, and to provide authority for the State committee to establish final reporting dates and normal planting periods for crops.

Section 718.5 has been rewritten to provide producer services for other determinations and inspections in addition to acreage measurement services.

Section 718.6 replaces former sections 718.6 and 718.7 and has been rewritten to provide for farm operator reports of acreage instead of farmer certifications, to change the criteria for accepting late filed reports, to establish deadlines by which the farm operator may correct or revise a report of acreage, to restrict application of measurement variance (formerly administrative variance) to marketing quota crops, and to authorize the county committee to use a different percentage for the standard perimeter deduction upon approval by the State committee.

Section 718.7 replaces former section 718.8 and has been written so that the provisions of this section do not apply to acreages determined from data furnished by the producer.

Section 718.8 replaces former section 718.9.

Section 718.9 replaces former section 718.11 and has been rewritten to provide for a notice of measured acreage instead of a notice of failure to comply and to change the requirements for furnishing farm operators such notice.

Section 718.10 replaces former section 718.12 and has been rewritten to provide for redetermination of appraised yield and farm stored production in addition to redetermination of acreages.

Section 718.11 replaces former section 718.13 and has been rewritten to restrict application to peanut and tobacco acreages.

Former section 718.10 has been deleted because applicable program regulations now cover these provisions where applicable.

Former section 718.14 has been deleted because the State committee has been given authority to establish final reporting dates under section 718.4.

Since farmers need to know the changes herein as soon as possible in connection with the 1976 and subsequent years, it is hereby found and determined that compliance with the notice, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Accordingly, the provisions of 7 CFR of Part 718 are revised to read as follows:

Sec.
718.1 Applicability.
718.2 Definitions.
718.3 Authority for farm entry and securing information.
718.4 Committee responsibilities.
718.5 Producer services.
718.6 Determining farm operator adherence to program requirements.
718.7 Producer reliance on previous determinations.
718.8 Determinating acreage for unusual cases.
718.9 Notice of measured acreage.
718.10 Redeterminations.
718.11 Adjustment of peanut and tobacco acreage.

AUTHORITY: Secs. 314, 373, 374, 375, 52 Stat. 48, as amended, 65, as amended, 66, as amended (7 U.S.C. 1314, 1373, 1374, 1375); Sec. 403, 61 Stat. 932, as amended (7 U.S.C. 1153).

§ 718.1 Applicability.

The provisions of this part apply to compliance determinations for 1976 and subsequent years under programs administered by the Agricultural Stabilization and Conservation Service through State and county committees, as authorized by the Agricultural Adjustment Act of 1938, as amended.

§ 718.2 Definitions.

(a) *General.* As used in this part and in all instructions, forms, and documents issued in connection therewith, the words and phrases defined in Part 719 of this chapter shall have the meanings so assigned and the terms defined in paragraph (b) of this section shall have the meanings so assigned, unless the text or subject matter otherwise requires.

(b) *Other terms.* (1) *Allotment crop.* Any crop for which acreage allotments are established pursuant to regulations of the Department implementing Federal law.

(2) *Determined acreage.* That acreage established by a representative of the Department of Agriculture on the farm by use of official acreage, delineations on the photograph and planimetry or computations from scaled dimensions, or ground measurements.

(3) *Director.* The Director or Acting Director, Program Operations Division, Agricultural Stabilization and Conservation Service, Department of Agriculture.

(4) *Field.* A part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

(5) *Measurement Variance.* A prescribed amount within which the determined acreage can exceed a program requirement and still be considered as having met the program requirement.

(6) *Normal Planting period.* That period established by the State committee and approved by the Deputy Administrator during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

(7) *Normal row width.* The normal distance between rows of the crop in the field, but not less than four links (approximately 32 inches).

(8) *Official acreage.* That acreage established in the office or on the farm for fields and subdivisions and entered and maintained on aerial photography.

(9) *Performance assistant.* Person employed to secure data necessary for ascertaining producer adherence to requirements for receiving program benefits as set forth in this chapter.

(10) *Photocopy.* A reproduction of a portion of an aerial photoghaphic enlargement, showing a farm or group of small farms.

(11) *Quality control check.* A farm visit by an authorized representative of the Agricultural Stabilization and Conservation Service to a farm selected as a part of an impartial sample to determine the producer's adherence to program requirements or to verify the farm operator's report.

(12) *Reported acreage.* The acreage furnished by the farm operator on a form prescribed by the Deputy Administrator.

(13) *Reporting date.* The date established by the State committee, in accordance with the appropriate program regulation set forth in this chapter, by which a farm operator must report applicable program crop acreage.

(14) *Required check.* A farm visit by an authorized representative of the Agricultural Stabilization and Conservation Service to a farm specifically selected by application of prescribed criteria to determine the producer's adherence to program requirements or to verify the farm operator's report.

(15) *Standard perimeter deduction.* The acreage considered as being used for turn area and established by application of a prescribed percentage to the area planted to the crop in lieu of measuring the turn area.

(16) *Skip-row planting.* A cultural practice in which strips or rows of a crop are alternated with strips of idle land or another crop.

(17) *Subdivision.* A part of a field which is separated from the balance of the field by a temporary boundary such as a cropline which could be moved easily or will likely disappear.

(18) *Turn area.* That area perpendicular to the crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or end row).

§ 718.3 Authority for farm entry and securing information.

(a) *General.* Any authorized reprsentative of the Agricultural Stabilization and Conservation Service shall have authority, upon presentation of written authorization if such authorization is requested by any producer interested in the farm, to:

(1) Enter any farm for the purpose of ascertaining acreage, production, or adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program administered by the Agricultural Stabilization and Conservation Service.

(2) Secure from producers, on forms prescribed by the Deputy Administrator, data which are necessary to keep current the farm records located in the county Agricultural Stabilization and Conservation Service office or which are a requirement to obtain program benefits under any mandatory or voluntary program administered by the Agricultural Stabilization and Conservation Service.

(b) *Refusal to permit farm entry.* If a farm operator refuses to permit entry for the purpose of ascertaining acreage or production or determining adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program for which such determinations are required, the county executive director shall notify the farm operator in writing as soon as possible that, unless the farm operator advises the county office within 14 days after the date of such notice that he will permit entry and inspection on the farm and pay the cost thereof, the following consequences, as applicable, will apply until such time as he permits such entry and inspection:

(1) Program benefits will be denied;

(2) The entire crop production will be considered in excess of the farm marketing quota. In addition, for tobacco, the farm operator will be required to furnish proof of disposition of:

(i) Burley and flue-cured tobacco production on his farm which is in addition to the production shown on the marketing card;

(ii) Other kinds of tobacco produced on his farm and no credit will be given for disposing of any excess tobacco other than that properly identified by a marketing card unless such excess tobacco is disposed of in the presence of a representative of the county committee according to section 718.11 of this part.

(c) *Refusal to furnish information.* If a farm operator refuses to furnish reports or data which are necessary to keep current the farm records located in the county office or which are a requirement to obtain program benefits, he will be denied program benefits until such data is furnished to the county committee.

§ 718.4 Committee responsibilities.

(a) *County committee.* The county committee shall provide for making program determinations and securing information in accordance with this part.

(b) *State committee.* (1) The State committee shall:

(i) Take any action required of the county committee which the county committee fails to take in accordance with this part.

(ii) Correct or require the county committee to correct any action taken by such committee which is not in accordance with this part.

(iii) Require the county committee to withhold taking any action which is not in accordance with this part.

(iv) Establish and publicize final reporting dates and normal planting periods for crops in accordance with instructions issued by the Deputy Administrator.

(2) The State committee may prescribe, upon approval of the Deputy Administrator, standards for the State which deviate from the national standards prescribed in this part by establishing:

(i) A minimum row width of less than four links (approximately 32 inches) for specific crops;

(ii) A minimum area larger than 0.03 acre for tobacco or 0.1 acre for other crops and land uses for deduction or adjustment credit;

(iii) A minimum width greater than four links (approximately 32 inches) for deduction of adjustment credit;

(iv) A minimum error amount or percentage different from those prescribed in paragraph (b) of § 718.10 for redetermination cost refunds.

(c) *Approved deviations from prescribed standards.* The following deviations from prescribed national standards have been established by the State committees pursuant to paragraph (b) of this section and approved by the Deputy Administrator:

ALABAMA

Minimum row width. Sixteen inches for peanuts.

CALIFORNIA

Deduction credit. (1) *Minimum area.* Five-tenths acre for all crops.

(2) *Minimum width.* (i) *Perimeter of field.* Ten links for all crops.

(ii) *Within the planted area.* (A) *Row crops.* Four normal rows except when planted in a skip-row pattern.

(B) *Close-sown crops.* Twenty links.

DELAWARE

(1) *Minimum row width.* Thirty inches for all crops.

(2) *Deduction credit.* Minimum width of six links.

GEORGIA

Redetermination refund. One-tenth acre for all acreage.

INDIANA

(1) *Deduction credit.* Minimum width of five links except 15 links for terraces, permanent irrigation, drainage ditches, and sod waterways.

(2) *Adjustment credit.* (i) *Minimum area.* Five-tenths acre for all crops and land uses except tobacco.

(ii) *Minimum width.* Five links.

(3) *Redetermination refund.* One-tenth acre for tobacco acreage.

IOWA

Deduction credit. (1) *Minimum width.* Seven links.

(2) *Minimum area.* Five-tenths acre.

LOUISIANA

Deduction credit. Unplanted contour levees within rice fields are not eligible for deduction.

MISSISSIPPI

(1) *Deduction credit.* Minimum width of 10 links.

(2) *Adjustment credit.* (i) *Minimum area.* Total excess or deficiency or 0.3 acre, whichever is smaller, except that if the excess of deficiency is more than 0.3 acre, one plot may be less than 0.3 acre.

(ii) *Minimum width.* Twenty links.

MISSOURI

Deduction credit. Minimum width of 10 links.

NEW HAMPSHIRE

Minimum row width. Thirty inches for corn.

NORTH CAROLINA

(1) *Minimum row width.* Eighteen inches for peanuts and 30 inches for corn.

(2) *Redetermination refund.* One-tenth acre for all acreage.

OHIO

(1) *Deduction credit.* Minimum width of eight links for all crops except tobacco.

(2) *Adjustment credit.* Minimum width of eight links for all crops except tobacco.

(3) *Redetermination refund.* One-tenth acre for tobacco acreage.

OKLAHOMA

Redetermination refund. Three-tenths acre for all acreage.

OREGON

Deduction credit. Minimum width of six feet within the planted area for close-sown crops.

SOUTH DAKOTA

(1) *Deduction credit.* Minimum area of 0.5 acre.

(2) *Adjustment credit.* Minimum area of 0.5 acre.

TENNESSEE

(1) *Adjustment credit.* (i) *Minimum width* (A) *Row crops other than tobacco.* Four rows.

(B) *Tobacco.* (1) *Along field boundary.* One row.

(2) *Within planted area.* Two rows.

(3) *Redetermination refund.* One-tenth acre for tobacco acreage.

TEXAS

(1) *Deduction credit.* Minimum width of nine links.

(2) *Adjustment credit.* Minimum width of nine links.

VIRGINIA

Redetermination refund. For all acreage, the larger of 0.1 acre or 10 percent of the acreage for areas of less than five acres.

WISCONSIN

(1) *Deduction credit.* Minimum width of 10 links for all crops except tobacco.

(2) *Redetermination refund.* One-tenth acre for tobacco acreage.

§ 718.5 Producer services.

(a) *General.* The county committee shall provide producer services if the producer requests such service and pays the cost except that request for service shall not be accepted for determining total acreage of a crop or land use:

(1) When the request is made after the date is established by the State committee for accepting farm operator reports of acreage for wheat (for proven yield purposes), cotton, rice, peanuts, and tobacco except as provided in paragraph (a) (1) of § 718.6.

(2) When the request is made after the farm operator has furnished the county office production evidence in connection with a claim for disaster payment except as provided in paragraph (a) (1) of § 718.6.

(3) When the request is made in connection with a late filed farm operator report of acreage and evidence of the crop is not available for inspection and acreage determinations.

(b) *Types of producer service.* Services include but are not limited to measuring land areas (including staking and referencing), measuring quantities of farm stored commodities, inspecting beehives for losses due to pesticide, appraising yield of crops, and inspection of emergency hay.

(c) *Guaranteeing service.* A producer shall not be adversely affected by an error made by an employee of the Agricultural Stabilization and Conservation Service in performing a producer service when the producer has relied in good faith on such service.

(d) *Staking and referencing.* The acreage requested to be staked and referenced must equal the farm allotment for marketing quota crops or permitted acreage for cropland adjustment program. If all of the crop(s) for which service is performed is within the staked area, the farm shall be considered in compliance with the allotment or permitted acreage.

§ 718.6 Determining farm operator adherence to program requirements.

(a) *Farm operator report.* A report of acreage, land use, production, and other program requirements shall be furnished to the county committee by the farm operator not later than the date established in accordance with paragraph (b) of § 718.4. The report shall be used for determining program eligibility and benefits, except as otherwise provided under this part. The report shall be on forms prescribed and in accordance with instructions issued by the Deputy Administrator.

(1) *Accepting a late filed report.* A farm operator's report may be accepted after the established date for reporting provided evidence of the crop is still available for inspection and determination and the farm operator pays the cost of the farm visit.

(2) *Corrected report.* The farm operator may correct a report of acreage anytime prior to harvest provided the error was not discovered as a result of a farm visit by a representative of the Agricultural Stabilization and Conservation Service.

(3) *Revised-report.* The farm operator may revise a report of acreage to reflect that the harvested acreage is less than the planted acreage anytime up to the time for furnishing production evidence to the county committee.

(b) *Quality control.* A representative number of farms as prescribed by the Deputy Administrator shall be visited by an authorized representative of the Agricultural Stabilization and Conservation Service to ascertain the acreage or production or to determine adherence to any requirement specified as a prerequisite for obtaining a program benefit.

(c) *Measurement variance.* When marketing quotas are in effect for a crop, the crop and land use acreage determined in accordance with this section shall be deemed to be in compliance with the farm allotment when such determined acreage does not exceed the farm allotment by more than the larger of 0.1 acre or two percent of the allotment but not to exceed 0.9 acre.

(d) *Official acreage.* If an acreage has been established by a representative of the Agricultural Stabilization and Conservation Service for an area delineated on an aerial photograph, such acreage will be recognized by the county committee as the official acreage for the area until such time as the boundaries of such area are changed. When the boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until the boundaries are verified by an authorized representative of the Agricultural Stabilization and Conservation Service.

(e) *Measurement of row crops.* Measurements of any row crop shall extend beyond the planted area by a distance equal to the larger of two links (approximately 16 inches) or one-half the distance between the rows.

(f) *Rule of fractions.* (1) *Tobacco.* The acreage of each field or subdivision computed for tobacco shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre.

(2) *Other crops and land uses.* The acreage of each field or subdivision computed for land uses or crops except tobacco shall be recorded in acres and tenths of an acre, dropping all hundredths of an acre.

(g) *Acreage considered as devoted to a crop or land use.* The entire acreage of a field or subdivision devoted to a crop or land use shall be considered as devoted to the crop or land use subject to any allowable deduction or adjustment credit under this paragraph except as otherwise provided in this part.

(1) *Acreages of row crops planted in skip-row patterns.* (i) *Crops planted in strips of two or more rows alternating with idle land.*

(A) *Peanuts.* The entire acreage of the field or subdivision shall be considered as devoted to peanuts where the peanuts are planted in strips which are less than eight normal rows in width or the strips of idle land are less than eight normal rows in width. If both the strips of peanuts and the strips of idle land are at least as wide as eight normal rows, only the acreage planted to peanuts, including the larger of one-half the distance between the rows of peanuts or two links (approximately 16 inches) beyond the outside rows of peanuts in each strip, shall be considered as peanuts.

(B) *Other row crops.* The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than eight links (approximately 63 inches) in width. If the strips of idle land are at least eight links (approximately 63 inches) in width, only the acreage of the strips planted to the crop, including the larger of one-half the distance between the rows of the crop or two links (approximately 16 inches) beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(ii) *Crop being measured alternating with another crop.* The entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than eight links (approximately 63 inches) in width. However, if the strips of the other crop are at least eight links (approximately 63 inches) in width, and if such other crop: (A) Has substantially the same growing season as the crop being meas-

ured, only the acreage planted to the crop being measured, including the smaller one-half the distance between the strips of the crop being measured or four links (approximately 32 inches), shall be considered as being devoted to the crop being measured.

(B) Does not have substantially the same growing season as the crop being measured, determine the acreage of the crop being measured in accordance with paragraphs (g)(1)(i) of this section.

(iii) *Crops planted in single wide rows.* The entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than eight links (approximately 63 inches). If the distance between the rows of the crop is at least eight links (approximately 63 inches), only eight links (approximately 63 inches), in width for each row shall be considered as being devoted to the crop.

(2) *Deductions.* Any continuous area which is not devoted to the crop or land use being measured and which is not part of a skip-row pattern under paragraph (g)(1) of this section shall be deducted from the acreage of the crop or land use if such area meets the following minimum national standards or requirements:

(i) *Minimum width requirement.* Four links (approximately 32 inches).

(ii) *Minimum area requirement.*

(A) *Tobacco.* Three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways each of which is at least four links (approximately 32 inches) in width may be combined to meet the 0.03-acre minimum requirement.

(B) *All other crops and land uses.* One-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways each of which is at least four links (approximately 32 inches) in width and each of which contains 0.1 acre or more may be combined to meet any larger minimum prescribed for a State under paragraph (b)(2) of § 718.4.

(iii) *Standard perimeter deduction.* A standard perimeter deduction of three percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas. The county committee may use, upon approval by the State committee, a different percentage when the three percent or zero percent deduction does not adequately reflect the normal cultural practice in the county.

(3) *Adjustment credit.* Credit for adjusting acreage of tobacco or peanuts in accordance with applicable regulations shall be given only for areas of reasonable shape and for a reasonable number of such areas. In addition, one of the following criteria must be met:

(i) The area must be at least four links (approximately 32 inches) in width and contain at least 0.03 acre for tobacco or 0.1 acre for all other crops and land uses. If an area was ineligible for deduction, it may be enlarged to meet these minimum requirements for adjustment credit.

(ii) An entire field or subdivision is adjusted.

(iii) The area being adjusted constitutes the total excess or deficient acreage of the crop or land use for the farm.

(iv) The area being adjusted is the remaining area required for adjustment after adjusting entire fields or subdivisions.

§ 718.7 Producer reliance on previous determinations.

If in determining his acreage, a producer relies in good faith on an acreage previously determined by an employee of the Agricultural Stabilization and Conservation Service (except acreage determined from data furnished by the producer) and the acreage is subsequently determined by the county committee to be incorrect, the county committee shall consider the acreage on which the producer relied to be correct for that program year upon obtaining satisfactory proof from the producer that he relied in good faith upon the incorrect determination. However, the county committee may use the correct data if the producer would be adversely affected by an error in producer service provided under § 718.5 of this part.

§ 718.8 Determining acreage for unusual cases.

To assure uniform and equitable treatment when unusual cases cannot be handled equitably under this part, the Deputy Administrator shall provide, as necessary, methods for determining the proper acreage in the following groups of unusual cases:

(a) *Reliance by the farm operator on erroneous advice.* The farm operator has acted in good faith in reliance upon erroneous advice given by a representative of the State or county committee who is authorized to furnish information concerning the determination of acreage.

(b) *Practices which tend to defeat program purposes.* Any method of planting the crop or any method of adjusting the crop or land use acreage which tends to defeat the program purposes.

(c) *Cases not otherwise provided for.* Other situations or planting patterns which are not otherwise provided for in this part.

§ 718.9 Notice of measured acreage.

Written notice of measured acreage shall be on a form prescribed by the Deputy Administrator and shall constitute notice to all interested producers on the farm. The county committee shall furnish such notice to the farm operator when:

(a) *For marketing quota crops.* The determined acreage for the crop exceeds the farm allotment for such crop by more than the measurement variance.

(b) *For all other crops or land uses.* The determined acreage for the crop differs from the acreage of such crop that was reported by the farm operator.

§ 718.10 Redeterminations.

(a) *General.* A redetermination of crop and land use acreage appraised yield, or farm stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 days after the date of the notice furnished the farm operator in accordance with section 718.9 of this part or within five days after the initial appraisal of the yield of a crop or before any of the farm stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination.

(b) *Refund of producer payment of cost for redetermination.* The county committee shall refund the payment of the cost for redetermination when because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of: (i) Five percent or five pounds for cotton; (ii) Five percent or one bushel for wheat, barley, and rice; (iii) Five percent or two bushels for corn and grain sorghum.

(2) The farm stored production is changed by at least the smaller of three percent or 600 bushels.

(3) The acreage of the crop or land use is: (i) Changed by at least the larger of three percent or 0.5 acre, or (ii) Considered to be within program requirements.

(c) *Notice to farm operator.* The county committee shall notify, in writing, the farm operator of its redetermination. Such notice shall constitute notice to all interested producers on the farm.

§ 718.11 Adjustment of peanut and tobacco acreage.

(a) *General.* The farm operator or other interested producer on a farm, who elects to adjust an acreage of peanuts or tobacco in accordance with applicable program regulations, must notify the county committee of such election within the time limits specified in such regulations and pay the cost of a farm visit to determine the adjusted acreage. The adjusted acreage shall be used for program purposes except that if the requirements of this section are not met, the acreage initially determined shall be considered as peanut or tobacco acreage for the farm.

(b) *Peanuts.* The farm operator may adjust an acreage of peanuts by disposing of the excess peanuts, which were included in the farm operator's initial report of acreage, prior to combining any peanuts of the same type. Such disposition of excess peanuts must be accomplished by:

(1) Leaving the peanuts in the ground. Peanuts disposed of in this manner may be hogged off.

(2) Harvesting as green peanuts for boiling when the excess acreage is designated for disposal as green peanuts.

(3) Plowing peanuts under before any peanuts are dug from the ground. The disposition of peanuts in this manner shall be witnessed by a representative of the Agricultural Stabilization and Conservation Service when such peanuts could be harvested for nuts.

(4) Plowing under or shredding, under the supervision of a representative of the Agricultural Stabilization and Conservation Service, dug peanuts:

(i) Which are damaged to the extent that it would not be economically feasible to thresh the dug peanuts for nuts, or

(ii) Which the county committee, with the concurrence of the State committee, determined were in excess of the farm allotment and were inadvertently dug from the ground.

(c) *Tobacco.* The farm operator may adjust an acreage of tobacco by disposing of the excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. Such disposition shall be witnessed by a representative of the Agricultural Stabilization and Conservation Service and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm; *Provided,* That no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested, but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved. Disposition of excess tobacco will avoid marketing quota penalties but will not establish eligibility for price support.

Effective date: January 14, 1977.

Signed at Washington, D.C., on January 7, 1977.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.77-1244 Filed 1-13-77;8:45 am]

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

[Lemon Reg. 75]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

PREAMBLE

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period January 16-22, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.375 Lemon Regulation 75.

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

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

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is good for larger size fruit but weaker for the smaller sizes. Average f.o.b. price was $4.99 per carton the week ended January 8, 1977 compared to $5.03 per carton the previous week. Track and rolling supplies at 80 cars were the same as last week.

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

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 11, 1977.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 16, 1977, through January 22, 1977, is hereby fixed at 210,000 cartons.

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

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

Dated: January 12, 1977.

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

[FR Doc.77-1419 Filed 1-13-77;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[1976 Crop Distress Grain Loan Program Regulations]

PART 1473—DISTRESS LOANS

Subpart—1976 Crop Distress Grain Loan Program

This subpart issued by the Commodity Credit Corporation contains the terms and conditions under which recourse, distress loans will be made available on 1976-crop sorghum and wheat, in permanent facilities.

The Commodity Credit Corporation has issued regulations making its regular price support loan and purchase program available for the 1976 crops of sorghum and wheat. The distress loan program set forth in this subpart is an adjunct to the regular price support loan and purchase program. The distress loan program, which will be put into effect in areas where there has been sprouting of sorghum and wheat due to wet weather, is designed to assist producers in holding their grain until they can market it in usual channels.

Since this is a temporary emergency program which must be made effective immediately, it is hereby found and determined that compliance with the notice of proposed rule making procedure is unnecessary, impracticable and contrary to the public interest. Therefore, this subpart is being issued without following such proposed rule making pro-

cedure and shall be effective January 13, 1977.

Subpart—1976 Crop Distress Grain Loan Program

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c).

Subpart—1976 Crop Distress Grain Loan Program

§ 1473.1 Administration.

(a) *General statement.* This subpart contains the terms and conditions under which the Commodity Credit Corporation will make recourse, distress loans (hereinafter called loans) on 1976-crop sorghum and wheat stored in permanent facilities. As used in this subpart, "CCC" means the Commodity Credit Corporation, and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) *Responsibility.* The GOC Division, ASCS will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, Programs, ASCS, in accordance with program provisions and policy determined by the Board of Directors and the Executive Vice President, CCC. In the field, the regulations in this subpart will be administered by the State and County Agricultural Stabilization Committees (hereinafter called State and county committees), Prairie Village Commodity Office and Data Systems Field Office.

(c) *Documents.* Any member of the county committee, the county executive director, or any other employee of the county ASCS office (hereinafter called county office) designated in writing by the county executive director to act in his behalf (such delegation to be filed in the county office) is authorized to approve documents under this program except where otherwise specified in the regulations in this subpart. He may also execute releases or otherwise obtain the release of record of chattel mortgages and security agreements made to CCC to secure loans upon payment in full of the loan involved. He may execute indemnity agreements on behalf of CCC where any county recording officer deems such indemnity agreement necessary to releasing a mortgage or security agreement of record.

(d) *Limitation of authority.* County executive directors, State and county committees, the Prairie Village Commodity Office, the Data Systems Field Office, and employees thereof, do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(e) *State committee.* The State committee may take an action authorized or required by the regulations in this subpart to be taken by the county committee which has not been taken by such committee. The State committee may also (1) correct or require a county committee to correct any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the applicable regulations in this subpart.

(f) *Executive Vice President, CCC.* No delegation herein to a State or county committee, the Prairie Village Commodity Office, or the Data Systems Field Office shall preclude the Executive Vice President, CCC or his designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee, the Prairie Village Commodity Office, or the Data Systems Field Office.

§ 1473.2 Availability of loans.

(a) *Areas.* In areas designated by the State committee, loans to eligible producers shall be available on 1976-crop sorghum and wheat, stored on or off the farm. Producers may obtain at the county office information as to areas where loans are available.

(b) *Requesting loans.* Producers should make requests for loans at the county office which keeps the farm program records for the farm.

(c) *Period of availability.* Loans will be available in any area designated by the State committee beginning with the date the program for the area is announced by the State committee.

(d) *Completion of applicable loan documents.* To obtain a loan, the producer must sign and deliver to the county office, a Form CCC–677, "Farm Storage Note and Security Agreement" or a Form CCC–678, "Warehouse Storage Note and Security Agreement" and a "Supplemental Terms and Conditions to Farm Storage Note, and Security Agreement" or "Supplemental terms and conditions to Warehouse Storage Note and Security Agreement."

§ 1473.3 Disbursement of loans.

Disbursement of loans will be made to producers by county offices by drafts drawn on CCC or by credit to the producer's account. The producer shall not present the loan documents for disbursement unless the grain covered by the mortgage is in existence and in good condition. If the grain was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly by the producer.

§ 1473.4 Eligible producer.

(a) *Producer.* An eligible producer shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity (1) which produced the grain tendered for loan as landowner, landlord, tenant, sharecropper, and (2) which meets the other requirements for eligibility for loans contained in this subpart.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate he represents. Loan documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for a loan only if he meets one of the following requirements: (1) The right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable loan documents are signed by the guardian; (3) any note signed by the minor is cosigned by a financially responsible person; or (4) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had he been an adult.

(d) *Beneficial interest.* To be eligible for a loan, the beneficial interest in the grain must be in the producer tendering the grain as security for a loan and must always have been in him or in him and a former producer whom he succeeded before it was harvested, except that heirs who (1) succeed to the beneficial interest of a deceased producer, and (2) assume the decedent's obligation under a loan if the loan has already been obtained shall be eligible for loans as producers whether such succession occurs before or after harvest of the grain. A producer shall not be considered to have divested himself of the beneficial interest in the grain if he enters into a contract to sell, or gives an option to buy his grain if, under the contract or option, he retains control and risk of loss and title to the grain subject to such agreements, and retains control of its production.

(e) *Succession of interest.* To meet the requirements of succession to the beneficial interest of a former or deceased producer under paragraph (d) of this section, the rights responsibilities of interests of the former producer with respect to the farming unit on which the grain was produced shall have been substantially assumed by the person claiming succession. Mere purchase or inheritance of a crop prior to harvest without acquisition of any additional interest in

the farming unit on which the crop is produced does not constitute succession to such beneficial interest.

(f) *Joint loans.* Two or more eligible producers who have an interest in eligible grain which is the production from a farm and is stored in accordance with § 1473.5 of this subpart may obtain a joint loan on such grain. Each producer who is a party to the joint loan will be jointly and severally responsible for the obligations set forth in the loan documents and the regulations in this subpart.

§ 1473.5 Eligible grain.

Loans will be made only on commodities in approved storage as defined in § 1421.7 of this chapter. The sorghum and wheat shall meet the eligibility requirements for the applicable commodity appearing in the following sections of this chapter: Sorghum § 1421.211(a) and wheat § 1421.461(a).

§ 1473.6 Determination of quantity.

The quantity of grain tendered for loan shall be determined in accordance with § 1421.17 for farm stored loans and § 1421.9 for warehouse stored loans of this chapter.

§ 1473.7 Liens.

If there are any liens or encumbrances on the grain, waivers that will fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. Notwithstanding the foregoing provisions, in lieu of waiving his prior lien on grain tendered as security for a loan, a lienholder may execute a Lienholder's Subordination Agreement (Form CCC–864) with CCC in which he subordinates his security interest to the rights of CCC in the grain subject to the loan or such other quantity of the grain as is delivered in satisfaction of a loan. No additional liens or encumbrances shall be placed on the grain after the loan is approved.

§ 1473.8 Fees and charges.

(a) *Loan service fee.* A producer shall pay a loan service fee of $10 plus $1 for each bin sealed over one; or $6 plus $1 for each warehouse receipt over one.

(b) *Delivery charge.* A delivery charge, in addition to the loan service fee, shall be paid by producers on the quantity of grain delivered to CCC. The rate is one half cent per bushel for wheat and 1 cent per hundredweight for sorghum. The delivery charge shall be paid at time of settlement.

(c) *Prepaid storage.* Although prepaid storage is not required under recourse loans, storage charges must be provided for by the producer, or such charges will be set-off against the producer in accordance with § 1421.9 of this chapter.

§ 1473.9 Setoffs.

The proceeds of the loan shall be applied against any indebtedness of the producer to CCC or any other agency of the United States in accordance with the provisions of § 1421.15 of this chapter.

§ 1473.10 Interest rate.

Loans shall bear interest at the same rates as those announced for regular nonrecourse loans in a separate notice published in the FEDERAL REGISTER (41 FR 13971; April 1, 1976).

§ 1473.11 Release of grain under loan.

(a) *Obtaining release farm stored loan.* A producer shall not remove any collateral covered by a chattel mortgage until he has received prior written approval for such removal from the county committee on a form prescribed by CCC. A producer may at any time obtain release of all or part of the grain remaining under loan by paying to CCC the amount of the loan made with respect to the quantity of the grain released plus interest. When the proceeds of the sale of the grain are needed to repay a loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC to remove a specified quantity of the grain from storage. Any suchs approval shall be subject to the terms and conditions set out in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the grain or release the producer from liability for any amounts due on his loan indebtedness if full payment of such amounts is not received by the county office.

(b) *Release of chattel mortgage.* The chattel mortgage shall not be released until the loan has been satisfied in full. After satisfaction of a loan, the county executive director shall release the chattel mortgage.

§ 1473.12 Insurance.

CCC does not require the producer to insure the grain placed under a loan; however, if the producer insures such grain and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the grain involved in the loss.

§ 1473.13 Losses in quantity or quality.

CCC will not assume losses in quantity or quality of the grain under loan resulting from any cause.

§ 1473.14 Personal liability of the producer.

The personal liability of the producer to CCC for fraud or other reasons stated in § 1421.16 of this chapter in connection with a loan shall be the same as the personal liability of the producer in connection with a farm-storage or warehouse storage loan as prescribed in paragraphs (a), (c), (d), (e), and (f) of such § 1421.16, except that the loan settlement value referred to in such section shall be the settlement value as determined under § 1473.17 of this subpart.

§ 1473.15 Loan rates.

Loans will be made under this program at 75 percent of the basic county loan rate for the applicable commodity established for the county in which the grain is stored under the regular 1976 crop price support loan and purchase programs, 7 CFR Part 1421. Such rates appear in the following sections of this chapter: Sorghum—§ 1421.239; and Wheat—§ 1421.489.

§ 1473.16 Maturity of loans.

Loans mature on demand, but not later than January 31, 1977.

§ 1473.17 Settlement.

Loans are recourse loans and the principal of a loan plus interest must be paid on or before maturity. Loans shall be satisfied in accordance with the provisions contained in this section.

(a) *Producer delivers commodity to CCC.* If, on maturity, repayment has not been made and the producer delivers the grain under loan to CCC, delivery of the grain to CCC shall be made in accordance with instructions issued by the county office. When the grain is delivered to CCC, credit shall be given to the producer for the quantity and quality of the grain actually delivered, at the market price at the time and place of delivery, as determined by CCC: *Provided, however,* That if such grain is sold by CCC in order to determine the market price, the settlement value shall not be less than such sales price. If the amount of such credit exceeds the amount due on the principal of the loan plus interest, plus other charges incident to the delivery, the amount of the excess shall be paid to the producer by the county office. If the amount of such credit is less than the amount due on the principal of the loan plus accrued interest, plus other charges incident to the delivery, the amount of the deficiency shall be paid by the producer to CCC. Any payment which would be due to the producer under any agricultural program administered by the Secretary of Agriculture, or any other payments which are due or may become due the producer from CCC or any other agency of the United States, may be set off against such deficiency.

(b) *Producer repays distress loans.* If the producer does not deliver the grain to CCC, he must repay in cash the principal due on the loan plus accrued interest.

(c) *Handling payments and collections not exceeding $3.* In order to avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less which are due the producer will be paid only upon his request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1473.18 Foreclosure.

If the distress loan is not satisfied upon maturity, the regulations in § 1421.23 of this chapter with respect to foreclosure shall apply.

Signed at Washington, D.C., on January 5, 1977.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.77-1239 Filed 1-13-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1434]

1977 CROP HONEY PRICE SUPPORT PROGRAM

Proposed Determinations

The Secretary of Agriculture is preparing to make determinations with respect to a price support program for the 1977 crop of honey and the regulations to carry out the program. The determinations relate to:

a. Price support rates based on color differentials, class and grade.

b. Program availability period.

c. Detailed operating provisions to carry out the program.

The above determinations are to be made pursuant to the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1421 et seq.) and the Commodity Credit Corporation Charter Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714 et seq.).

a. *Price support program, color differentials and discounts for quality.* Title II of the Agricultural Act of 1949, as amended, authorizes and directs the Secretary to make available through loans, purchases or other operations, support to producers of honey at a level which is not in excess of 90 percent nor less than 60 percent of the parity price thereof. Program rates will be based on color, class and grade and used to reflect marketing features and conditions under which honey is merchandised. Section 401(b) of the Act requires that, in determining a support rate in excess of the minimum level prescribed for honey, consideration must be given to the supply of the commodity in relation to the demand thereof, the price levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture and the national economy, the ability to dispose of stocks acquired under a price support program, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand.

b. *Program availability period.* Comments are invited with respect to the program availability period for 1977 crop honey.

c. *Detailed operating provisions.* Detailed operating provisions necessary to carry out the program on honey will be considered for 1977. Provisions of this kind may be found in the regulations providing terms and conditions for the current price support program in Part 1434 of Title 7 of the Code of Federal Regulations.

Prior to making the foregoing determinations and issuing related regulations, consideration will be given to data, views, and recommendations which are submitted in writing to the Director, Grains, Oilseeds and Cotton Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20013.

In order to be sure of consideration, all submissions must be received not later than February 14, 1977. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, at the office of the Director.

Signed at Washington, D.C., on January 5, 1977.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 77-1240 Filed 1-13-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Proposal to Adopt Definition of Small Farm for the Purpose of Receiving Financial Assistance

Correction

In FR Doc. 76-36957 appearing at page 55202 in the issue of Friday, December 17, 1976 the following corrections should be made:

1. On page 55202, middle column, first paragraph, second line immediately below the table, the figure "12" should read "121".

2. On page 55202, third column, designation of the schedule at the top should read "J".

FEDERAL TRADE COMMISSION

[16 CFR Part 1]

TRADE REGULATION RULEMAKING PROCEDURES

Proposed Clarifications

The Federal Trade Commission proposes to change 16 CFR 1.18 to clarify that certain documents will be included on the rulemaking record. This amendment encompasses documents which are (a) obtained or generated by the Commission's staff during the course of the development of a proposed trade regulation rule, (b) considered by the Commission to be relevant to the proceeding, and (c) believed not to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. This amendment also provides for the placement on the public record of other non-exempt documents obtained or generated by the Commission's staff during the development of the proposed rule or during a rulemaking proceeding which are not made part of the rulemaking record. Although such documents would be available to any person upon request, the Commission believes that in order to elicit informed comments on proposed trade regulation rules, it should exercise its discretion to make such information publicly available at the beginning of a rulemaking proceeding, or as soon as possible thereafter, whether requested or not.

Comments on the proposed amendment shall be received by the Commission for a period of 60 days, ending March 15, 1977. Such comments should be addressed to the Secretary, Federal Trade Commission, Washington, D.C. 20580. This amendment would apply, if adopted, only to rules proposed after its effective date.

In consideration of the foregoing, it is proposed to revise 16 CFR § 1.18 to read as follows:

§ 1.18 Rulemaking Record.

(a) Definition—For the purposes of these rules the term "rulemaking record" includes the rule, its Statement of Basis and Purpose, the verbatim transcript of the informal hearing, written submissions, the summary and findings of the presiding officer, and the staff recommendations as well as any public comment thereon, and any other information which the Commission considers relevant to the rule, including material obtained or generated by the Commission's staff in the course of the development of a proposed trade regulation rule which is believed not to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

(b) Public availability of the rulemaking record—the rulemaking record shall be publicly available except when the presiding officer, for good cause shown, determines that it is in the public interest to allow any submission to be received in camera subject to the provisions of § 4.11 of this chapter.

(c) Miscellaneous public documents—Material obtained or generated by the Commission's staff in the course of development of a proopsed trade regulation rule or during a rulemaking proceeding which is believed not to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and which is not part of the rulemaking record, shall be publicly available.

By direction of the Commission dated Dec. 28, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1251 Filed 1-13-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 510]

[Docket No. 76N-0171]

CHLOROFORM AS AN INGREDIENT OF DRUGS FOR ANIMAL USE

Proposal Establishing New Animal Drug Status

Correction

In FR Doc. 76-34960, appearing at page 52482 in the issue for Tuesday, November 30, 1976, on page 52484, in the second column, the 7th and 8th lines of § 510. 413(b), "subject to regulatory action", should read "adulterated".

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 90]

CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Notice of Proposed Rulemaking

Notice is hereby given that it is proposed to amend 29 CFR Part 90, the regulations pertaining to certification of eligibility to apply for worker adjustment assistance pursuant to sections 221–250 of the Trade Act of 1974 (19 U.S.C. 2271–2322).

The following amendments are proposed:

1. The definition of "firm" in § 90.2 has been expanded to cover predecessors and successors-in-interest and affiliated firms which are controlled or substantially beneficially owned by substantially the same persons.

2. Section 90.14 has been amended to set forth the method of service of and time for compliance with a subpena.

3. Section 90.16(g) has been added to provide for notices of determinations which contain both a certification and a denial of eligibility to apply for adjustment assistance. Such notices are appropriate when certain identifiable segments of workers in a firm or an appropriate subdivision do not meet the statutory criteria for certification of eligibility to apply for adjustment assistance, although other identifiable segments of the workers do satisfy the statutory criteria.

4. Section 90.17(d) has been amended in order to make it clear that a notice of termination of certification shall not have a retroactive effect which would require workers to repay previously disbursed benefit payments.

5. Section 90.17(e) has been added to provide for notices of partial termination in order to make it clear that a termination of certification may cover only a portion of the group of workers specified in the certification.

6. Section 90.17(f) has been added to provide for notices of continuation of certification when the certifying officer determines that a certification should not be terminated.

7. A new § 90.18 has been added to provide for administrative reconsideration of determinations of the Secretary. New § 90.18 sets forth procedures by which a party aggrieved by a determination of the Secretary may seek reconsideration of a determination when there is reason to believe the determination is erroneous. Anyone seeking reconsideration retains the right to obtain judicial review.

8. The current § 90.18 becomes § 90.19. It is further amended to make it clear that the determinations issued under § 90.16(g), new § 90.18(e), new § 90.18(h) and new § 90.18(i) are final determinations for purposes of judicial review under section 250 of the Act.

9. Section 90.36 has been added to set forth the Department's method of computing the time periods specified in § 90.13(a), § 90.18(a) and new § 90.19(a), and section 23 of the Act.

Interested persons are invited to submit written comments regarding the proposed amendments to the regulations to the Director, Office of Trade Adjustment Assistance, Room S5303A, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. All relevant comments and materials received before February 10, 1977, will be considered. All comments in response to this proposal will be available for public inspection during normal business hours at the foregoing address.

It is therefore proposed to amend 29 CFR Part 90 in the manner set forth below.

Signed at Washington, D.C., this 6th day of January 1977.

JOEL SEGALL,
Deputy Under Secretary International Affairs.

PART 90—CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Subpart A—General

Sec.
90.1 Purpose.
90.2 Definitions.
90.3 Applicability of part.

Subpart B—Petitions and Determinations of Eligibility To Apply for Adjustment Assistance

90.11 Petitions.
90.12 Investigation.
90.13 Public hearings.
90.14 Subpena power.
90.15 Recommendation.
90.16 Determinations and certifications of eligibility to apply for adjustment assistance.
90.17 Termination of certifications of eligibility.
90.18 Reconsideration of determinations.
90.19 Judicial review of determinations.

Subpart C—Initiation and Conduct of Study With Respect to Workers in Industry Which is the Subject of an Investigation for Industry Import Relief

90.21 Study.
90.22 Dissemination of program knowledge and assistance to workers.

Subpart D—General Provisions

90.31 Filing of documents.
90.32 Availability of information.
90.33 Confidential business information.
90.34 Notice procedures.
90.35 Transitional provisions.
90.36 Computation of time.

AUTHORITY: Sec. 248, Pub. L. 93-618, 88 Stat. 2029 (19 U.S.C. 2320), Secretary's Order 3-75 (40 FR 17863).

SOURCE: 40 FR 14909, Apr. 3, 1975, unless otherwise noted.

Subpart A—General

§ 90.1 Purpose.

The purpose of this Part 90 is to set forth regulations relating to the responsibilities vested in the Secretary of Labor by the Trade Act of 1974 (Pub. L. 93-618) concerning petitions and determinations of eligibility to apply for worker adjustment assistance. Section 248 of the Act directs the Secretary of Labor to prescribe regulations which will implement the provisions relating to adjustment assistance for workers. This part will provide for the prompt and effective disposition of workers' petitions for certification of eligibility to apply for adjustment assistance. It reflects delegations of authority which were published in the FEDERAL REGISTER (40 FR 17863, 40 FR 22048).

§ 90.2 Definitions.

As used in this part, the term:

"Act" means the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 1978, 2011-2030 (19 U.S.C. 2271-2322).

"Appropriate subdivision" means an establishment in a multi-establishment firm which produces the domestic articles in question or a distinct part or section of an establishment (whether or not the firm has more than one establishment) where the articles are produced. The term "appropriate subdivision" includes auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities.

"Certifying officer" means an official in the Bureau of International Labor Affairs, U.S. Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for adjustment assistance, preside at public hearings under section 221(b) of the Act, issue subpenas, and perform such further duties as may be required by the Secretary or by this Part 90.

"Commission" means the United States International Trade Commission, formerly named the United States Tariff Commission.

"Date of the petition" means the date thereon, but which in no event shall be more than 30 days before the date of filing.

"Date of filing" means the date on which petitions and other documents are received in the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. 20210.

"Date of issuance" means the date on which a certification of eligibility to apply for adjustment assistance is signed by the certifying officer.

"Director" means the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. The Director is responsible for the conduct of worker investigations under this part and for recommending to the certifying officer whether or not to issue certifications of eligibility to apply for adjustment assistance.

"Firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm.

"Group" means three or more workers in a firm or an appropriate subdivision thereof.

"Increased imports" means that imports have increased either absolutely or relatively, and would generally mean those increases as have occurred from a representative base period subsequent to the effectiveness of the most recent trade agreement concessions proclaimed by the President beginning in 1968.

"Layoff" means a suspension from pay status for lack of work initiated by the employer and expected to last for no less than seven (7) consecutive calendar days.

"Like or directly competitive" means that "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.); and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefor).

An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.

"Partial separation" means, with respect to an individual who has not been totally separated, that:

(a) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the firm or appropriate subdivision thereof, and

(b) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm or appropriate subdivision thereof.

"Secretary" means the Secretary of Labor, U.S. Department of Labor.

"Significant number or proportion of the workers" means that:

(a) In most cases the total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total unemployment of five percent (5 percent) of the workers or 50 workers, whichever is less; or

(b) At least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers would ordinarily have to be affected.

"Threatened to begin" means, in the context of impending total or partial separations, the date on which it could reasonably be predicted that separations were imminent.

"Total separation" means the layoff or severance of an individual from a firm or an appropriate subdivision thereof.

§ 90.3 Applicability of part.

This Part 90 generally relates to certifications of eligibility made under the Act. Subpart B specifically applies to the initiation and conduct of worker investigations and the issuance of determinations and certifications of eligibility to apply for adjustment assistance. Subpart C applies to studies of workers in industries which are the subject of investigations for industry import relief. Subpart D contains general provisions with respect to filing of documents and public availability of documents.

Subpart B—Petitions and Determinations of Eligibility To Apply for Adjustment Assistance

§ 90.11 Petitions.

(a) *Who may file petitions.* A petition under section 221(a) of the Act and this Subpart B shall be filed by a group of workers for a certification of eligibility to apply for adjustment assistance or by their certified or recognized union or other duly authorized representative.

(b) *Identification of petitioners.* Every petition filed with the Department shall clearly state the group of workers on whose behalf the petition is filed and the name(s) and address(es) of the person(s) by whom the petition is filed. Every petition shall be signed by at least three individuals of the petitioning group or by an official of a certified or recognized union or other duly authorized representative. Signing of a petition shall constitute acknowledgement that each signer has read the entire petition, that to the best of the signer's knowledge and belief the statements therein are true, and that each signer is duly authorized to sign such a petition.

(c) *Contents.* Petitions may be filed on a U.S. Department of Labor form. Copies of this form may be obtained at State Employment Security Agency local offices or by writing the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. 20210. Every petition shall include: (1) The name(s), address(es), and telephone number(s) of the petitioner(s); (2) The name or a description of the group of workers on whose behalf the petition is filed (e.g., all hourly and salaried employees of the XYZ plant of ABC corporation); (3) The name and address of the workers' firm or appropriate subdivision thereof; (4) the name, address, telephone number, and title of an official of the firm; (5) The approximate date(s) on which the total or partial separation of a significant number or proportion of the workers in the workers' firm or subdivision began and continued, or threatened to begin, and the approximate number of workers affected by such actual or threatened total or partial separation; (6) A statement of reasons for believing that increases of like or directly competitive imports contributed importantly to total or partial separations and to the decline in the sales or production (or both) of the firm or subdivision (e.g., company statements, articles in trade association publications, etc.); and (7) A description of the articles produced by the workers' firm or appropriate subdivision, the production or sales of which are adversely affected by increased imports, and a description of the imported articles concerned. If available, the petition also should include information concerning the method of manufacture, end uses, and wholesale or retail value of the domestic articles produced and the United States tariff provision under which the imported articles are classified.

(d) *Number of copies.* One (1) signed original and two (2) clear copies of the petition shall be filed. The name(s) of the person(s) signing the petition shall be typewritten or otherwise clearly reproduced.

§ 90.12 Investigation.

Upon receipt of a petition, properly filed, the Director of the Office of Trade Adjustment Assistance shall promptly publish notice in the FEDERAL REGISTER that the petition has been received. The Director shall initiate, or order to be initiated, such investigation as he determines to be necessary and appropriate. The investigation may include one or more field visits to verify information furnished by the petitioner(s) and to elicit other relevant information. In the course of the field investigation representatives of the Department shall be authorized to meet with and obtain information from responsible company officials, union officials, employees and other interested parties, or organizations, both private and public as may be necessary to marshal all relevant facts to recommend an appropriate finding with respect to the issuance of a determination of eligibility to apply for adjustment assistance. Upon conclusion of the investigation a report thereof, including a recommendation regarding group eligibility shall be made, as more specifically defined in § 90.16 of this Part 90.

§ 90.13 Public hearings.

(a) *When held.* A public hearing shall be held in connection with an investigation instituted under § 90.12 whenever, not later than ten (10) days after the date of publication in the FEDERAL REGISTER of the notice of receipt of the peti-

tion, such a hearing is requested in writing by:

(1) The petitioner; or

(2) Any other person found by the Secretary or certifying officer to have a substantial interest in the proceedings.

Such petitioner and other interested persons shall be afforded an opportunity to be present, to produce evidence, and to be heard.

(b) *Form of request.* A request for public hearing shall be filed in the same manner as provided for filing of petitions and other documents under § 90.31(a). A request by a person other than the petitioner shall contain:

(1) The name, address, and telephone number of the person, organization, or group requesting the hearing; and

(2) A complete statement of the relationship of the person, organization, or group requesting the hearing to the petitioner or the subject matter of the petition and a statement of the nature of its interest in the proceeding.

(c) *Time and place.* Public hearings will be held at the time and place specified in a notice published in the FEDERAL REGISTER. Such notice shall be published at least seven (7) calendar days before the scheduled hearing.

(d) *Presiding officers.* A certifying officer shall conduct and preside over public hearings.

(e) *Order of testimony.* Witnesses will testify in the order designated by the presiding officer. Each witness, after being duly sworn, will proceed with testimony. After testifying, a witness may be questioned by the presiding officer or an agent designated by the presiding officer. Any person who has entered an appearance in accordance with paragraph (k) of this sectoin may direct questions to the witness, but only for the purpose of assisting the presiding officer in obtaining relevant and material facts with respect to the subject matter of the hearing.

(f) *Evidence.* Witnesses may produce evidence of a relevant and material nature to the subject matter of the hearing.

(g) *Briefs.* Briefs of the evidence produced at the hearing and arguments thereon may be presented to the presiding officer by parties who have entered an appearance. Three (3) copies of such briefs shall be filed with the presiding officer within ten (10) days of the completion of the hearing.

(h) *Oral argument.* The presiding officer shall provide opportunity for oral argument after conclusion of the testimony in a hearing. The presiding officer will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Authentication of evidence.* Evidence, oral or written, submitted at hearings, will upon order of the presiding officer be subject to verification from books, papers, and records of the parties submitting such evidence and from any other available sources.

(j) *Transcripts.* All hearings will be stenographically reported. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Labor in Washington, D.C., or purchase copies as provided in 29 CFR 70.62(c).

(k) *Appearances.* The petitioner or an other person showing a substantial interest in the proceedings may enter an appearance at a hearing, either in person or by a duly authorized representative.

§ 90.14 Subpena power.

(a) The Secretary or certifying officer may require by subpena the attendance and testimony of witnesses and the production of evidence necessary to make a determination.

(b) If a person refuses to obey a subpena issued under paragraph (a) of this section, the Secretary or a certifying officer may petition the United States district court within the jurisdiction of which the proceeding is being conducted requesting an order requiring compliance with such subpena.

(c) Witnesses subpenaed under this section shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the United States Department of Labor.

(d) Subpenas issued under paragraph (a) of this section shall be signed by a certifying officer and shall be served either in person by an authorized representative of the Department of Labor or by certified mail, return receipt requested. The date for compliance shall be not earlier than seven (7) calendar days following service of the subpena.

§ 90.15 Recommendation.

As promptly as possible, but in any event not later than 45 days after the filing of a worker petition, the Director of the Office of Trade Adjustment Assistance shall submit to the certifying officer recommendations concerning whether or not to issue a certification of eligibility to apply for adjustment assistance. These recommendations shall be forwarded together with an investigative report, proposed findings of fact, transcripts of any public hearing conducted under this subpart, and other material developed during the investigation.

§ 90.16 Determinations and certifications of eligibility to apply for adjustment assistance.

(a) *General.* Not later than 15 days after receipt of the recommendations forwarded pursuant to § 90.15, the certifying officer shall make a determination on the petition and where affirmative issue a certification of eligibility as provided below.

(b) *Requirements for determinations.* After reviewing the material submitted under § 90.15, including any supplemental material which may be required in reaching a determination the certifying officer shall make findings of fact concerning whether:

(1) A significant number or proportion of the workers in such workers' firm (or an appropriate subdivision of the firm) have become, or are threatened to become, totally or partially separated;

(2) Sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Increases (absolute or relative) of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production. For purposes of this paragraph and part, the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(c) *Notice of affirmative determination and certification of eligibility.* Upon reaching a determination on a petition that a group of workers has met all the requirements set forth in section 222 of the Act and paragraph (b) of this section, the certifying officer shall issue a certification of eligibility to apply for adjustment assistance and shall promptly publish in the FEDERAL REGISTER a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include the certification of eligibility and shall constitute a Notice of Determination and Certification of Eligibility.

(d) *Contents of certification of eligibility.* The certification shall specify in detail:

(1) The firm or subdivision thereof at which the workers covered by the certification have been employed (which need not be limited to the unit specified in the petition), and may identify individual workers by name; and

(2) The impact date(s) on which the total or partial separations of the workers covered by the certification began or threatened to begin. When applicable, the certification shall specify the date(s) after which the total or partial separations of the petitioning group of workers from the firm or subdivision thereof specified in the certification are no longer attributable to the conditions set forth in paragraph (b) of this section. For purposes of this section, the "impact date" is the earliest date on which any part of the total or partial separations involving a significant number or proportion of workers began or threatened to begin.

(e) *Exclusions from coverage of a certification of eligibility.* A certification of eligibility to apply for adjustment assistance shall not apply to any worker:

(1) Whose last total or partial separation from the firm or appropriate subdivision occurred more than one (1) year before the date of the petition; or

(2) Whose last total or partial separation from the firm or appropriate subdivision occurred before October 3, 1974.

(f) *Notice of negative determination.* Upon reaching a determination that a group of workers has not met all the requirements set forth in section 222 of

the Act and paragraph (b) of this section, the certifying officer shall promptly publish in the FEDERAL REGISTER a summary of the determination together with the reasons for making such determinations (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination.

(g) *Notice of Determinations.* A notice of certification may contain a notice of negative determination with respect to certain segments of workers. Such notice shall constitute a Notice of Determinations.

§ 90.17 Termination of certifications of eligibility.

(a) *Investigation.* Whenever the Director of the Office of Trade Adjustment Assistance has reason to believe, with respect to any certification of eligibility that the total or partial separations from a firm or appropriate subdivision thereof are no longer attributable to the conditions specified in section 222 of the Act and § 90.16(b), the Director shall promptly make an investigation. Notice of the initiation of the investigation shall be published in the FEDERAL REGISTER and shall be transmitted to the group of workers concerned.

(b) *Opportunity for comment and hearing.* Within 10 days after publication of the notice under paragraph (a) of this section, the group of workers or other persons showing a substantial interest in the proceedings may request a public hearing or may make written submissions to show why the certification should not be terminated. If a hearing is requested under this paragraph, such hearing shall be conducted in accordance with § 90.13.

(c) *Recommendation.* Upon the conclusion of any public hearing conducted under this section, and after consideration of any written comments received under paragraph (b) of this section, the Director shall recommend to the certifying officer whether or not the certification should be terminated.

(d) *Notice of termination.* Within ten (10) days of receipt of a report recommending termination of a certification of eligibility, the certifying officer shall determine whether or not such certification shall be terminated. Upon reaching a determination that the certification of eligibility shall be terminated, the certifying officer shall make findings of fact and shall promptly have published in FEDERAL REGISTER a summary of the determination and the reasons therefor (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Termination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the certifying officer. The termination date specified by the certifying officer shall be not sooner than the date on which notice of such termination is published in the FEDERAL REGISTER.

(e) *Notice of Partial Termination.* A notice of termination may cover only a portion of the group of workers specified in the certification. Such notice shall constitute a Notice of Partial Termination.

(f) *Notice of Continuation of Certification.* Upon reaching a determination that the certification of eligibility should be continued, the certifying officer shall promptly publish in the FEDERAL REGISTER a summary of the determination with the reasons therefor. Such summary shall constitute a Notice of Continuation of Certification.

§ 90.18 Reconsideration of determinations.

(a) *Determinations subject to reconsideration; time for filing.* Any worker, group of workers, certified or recognized union, or authorized representatives of such worker or group, aggrieved by a determination issued pursuant to the Act and §§ 90.16(c), 90.16(f), 90.16(g), or 90.17(d) of this part may file an application for reconsideration of the determination with the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20210. All applications must be in writing and must be filed no later than fifteen (15) days after the notice of the determination has been published in the FEDERAL REGISTER.

(b) *Contents of application for reconsideration.* An application for reconsideration shall include: (1) Name(s), address(es), and telephone number of the applicant(s); (2) The name or a description of the group of workers on whose behalf the application for reconsideration is filed; (3) The name and case number of the determination complained of; and (4) A statement of reasons for believing that the determination complained of is erroneous. If the application is based, in whole or in part, on facts not previously considered in the determination, such facts shall be specifically set forth. If the application is based, in whole or in part, on an allegation that the determination complained of was based on mistake of facts which were previously considered, such mistake of facts shall be specifically set forth. If the application is based, in whole or in part, on an allegation as to a misinterpretation of facts or of the law, such misinterpretation shall be specifically set forth.

(c) *Determination regarding application for reconsideration.* Not later than fifteen (15) days after receipt of the application for reconsideration, the certifying officer shall make and issue a determination granting or denying reconsideration. The certifying officer may grant an application for reconsideration under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous; (2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or (3) If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the determination.

(d) *Notice of affirmative determination regarding application for reconsideration.* Upon reaching a determination that an application for reconsideration meets the requirements of paragraph (c) of this section, the certifying officer shall issue an affirmative determination regarding the application and shall promptly publish notice in the FEDERAL REGISTER that the application for reconsideration has been received and granted. Such notice shall constitute a Notice of Affirmative Determination Regarding Application for Reconsideration.

(e) *Notice of negative determination regarding application for reconsideration.* Upon reaching a determination that an application for reconsideration does not meet the requirements of paragraph (c) of this section, the certifying officer shall issue a negative determination regarding the application and shall promptly publish in the FEDERAL REGISTER a summary of the determination. Such summary shall constitute a Notice of Negative Determination Regarding Application for Reconsideration. A negative determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 250 of the Act and § 90.19(a) of this part.

(f) *Opportunity for comment.* Within ten (10) days after publication of a notice under paragraph (d) of this section, the group of workers or other persons showing an interest in the proceedings may make written submissions to show why the determination under reconsideration should or should not be modified.

(g) *Determinations on reconsideration.* Not later than forty-five (45) days after reaching an Affirmative Determination Regarding Application for Reconsideration, the certifying officer shall make a determination on the reconsideration.

(h) *Notice of revised certification of eligibility and notice of revised determination.* Upon reaching a determination on reconsideration that a group of workers has met all the requirements set forth in Section 222 of the Act and paragraph (b) of § 90.16 of this part, the certifying officer shall issue a revised determination concerning certification of eligibility to apply for adjustment assistance and shall promptly publish in the FEDERAL REGISTER a summary of the revised determination together with the reasons for making such revised determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include a certification of eligibility in accordance with paragraph (d) of § 90.16 of this part. The summary shall constitute a Notice of Revised Certification of Eligibility when the determination under reconsideration was a certification of eligibility. The summary shall constitute a Notice of Revised Determination when the determination under reconsideration was a negative deter-

mination or a certification containing a negative determination. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 250 of the Act and § 90.19(a) of this part.

(i) *Notice of negative determination on reconsideration.* Upon reaching a determination on reconsideration that a group of workers has not met all the requirements set forth in section 222 of the Act and paragraph (b) of § 90.16 of this part, the certifying officer shall issue a negative determination on reconsideration and shall promptly publish in the FEDERAL REGISTER a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination on Reconsideration. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 250 of the Act and § 90.19(a) of this part.

§ 90.19 Judicial review of determinations.

(a) *General.* Pursuant to section 250 of the Act, any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a final determination issued pursuant to the Act and §§ 90.16(c), 90.16(f), 90.16(g), 90.17(d), 90.18(e), 90.18(h) or 90.18(l) may file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The party seeking judicial review must file for review in the appropriate court within sixty (60) days after the notice of determination has been published in the FEDERAL REGISTER.

(b) *Certified record of the Secretary.* Upon receiving a copy of the petition for review from the clerk of the appropriate court of appeals, the certifying officer shall promptly certify and file in such court the record on which the determination was based. The record shall include transcripts of any public hearings, recommendations received pursuant to § 90.15, the findings of fact made pursuant to §§ 90.16(b), 90.18(e), 90.18(h) or 90.18(i), and other documents on which the determination was based.

(c) *Further proceedings.* If a case is remanded to the Secretary by the court of appeals for the taking of further evidence, the certifying officer shall direct that further proceedings be conducted in accordance with the provisions of Subpart B of this part, including the taking of further evidence. The certifying officer, after the conduct of such further proceedings, may make new or modified findings of fact and may modify or affirm the previous determination. Upon the completion of such further proceedings, the certifying officer shall certify and file in the appropriate court of appeals the record of such further proceedings.

(d) *Substantial evidence.* The findings of fact by the certifying officer shall be conclusive if the appropriate court of appeals determines that such findings of fact are supported by substantial evidence.

Subpart C—Initiation and Conduct of Study With Respect to Workers in Industry Which is the Subject of an Investigation for Industry Import Relief

§ 90.21 Study.

(a) *Initiation.* Upon notification by the Commission, pursuant to section 224 of the Act, that the Commission has begun an investigation under section 201 with respect to an industry import relief action, the Secretary shall direct the Director of the Office of Trade Adjustment Assistance to immediately begin a study of (1) The number of workers in the domestic industry producing the like or directly competitive article(s) who have been or are likely to be certified eligible for adjustment assistance; and (2) The extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) *Report.* The report of the Secretary of the study under section 224(a) of the Act and paragraph (a) of this section shall be made to the President not later than fifteen (15) days after the day on which the Commission makes its report under section 201.

(c) *Release of report.* Upon making the report of the study to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the FEDERAL REGISTER.

§ 90.22 Dissemination of program knowledge and assistance to workers.

Whenever the Commission makes an affirmative finding under section 201(b) of the Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall, to the extent feasible, make available to the workers in such industry full information about programs which may facilitate their adjustment to the import competition. He shall provide assistance to such workers in the preparation and processing of petitions and applications for program benefits.

Subpart D—General Provisions

§ 90.31 Filing of documents.

(a) *Where to file, date of filing.* Petitions and all other documents shall be filed at the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C. 20210. If properly filed, such documents shall be deemed filed on the date on which they are actually received in the Office of Trade Adjustment Assistance.

(b) *Conformity with rules.* Documents filed in support of the initiation of an investigation by the Director of the Office of Trade Adjustment Assistance shall be considered properly filed if they conform with the pertinent rules prescribed in this Part 90. The Director may accept documents in substantial compliance with the pertinent rules of this part provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules. The Director cannot waive full compliance with a rule which is required by the Act.

§ 90.32 Availability of information.

(a) *Information available to the public.* Upon request to the Director of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with the Director under the provisions of this Part 90, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this Part 90, recommendations to the certifying officer concerning determinations on petitions for certification of eligibility and determinations on termination of the effect of certifications of eligibility, summaries of the certifying officer's determinations concerning certifications of eligibility and terminations of the effect of certifications of eligibility, public notices concerning worker assistance under the Act and other reports and documents issued for general distribution.

(b) *Information not available to the public.* Confidential business information, defined in § 90.33 of this Part 90, shall not be available to the public.

§ 90.33 Confidential business information.

(a) *Definition.* Confidential business information means trade secrets and commercial or financial information which are obtained from a person and are privileged or confidential, as set forth in 5 U.S.C. 552(b) and 29 CFR Part 70.

(b) *Identification of information submitted in confidence.* Business information which is to be treated as confidential shall be submitted on separate sheets each clearly marked at the top, "Business Confidential." When submitted at hearings, such business information shall be offered as a confidential exhibit with a brief description of the nature of the information.

(c) *Acceptance of information in confidence.* The Director of the Office of Trade Adjustment Assistance may refuse to accept in confidence any information which he determines is not entitled to confidential treatment under this section. In the event of such refusal, the person submitting such information shall be notified and shall be permitted to withdraw such information.

§ 90.34 Notice procedures.

Formal notice of a certification, negative determination, or termination shall be transmitted promptly to the group of workers concerned and to all State Em-

ployment Security Agencies concerned whenever such notices are published in the FEDERAL REGISTER.

§ 90.35 Transitional provisions.

As more particularly provided in section 246 of the Act, a group of workers, their certified or recognized union, or other duly authorized representative who filed a petition under section 301(a)(2) of the Trade Expansion Act of 1962 before December 3, 1974, may file a new petition under section 221 of this Act if:

(a) The Commission has not rejected such previous petition before April 3, 1975; and

(b) No certification has been issued to the petitioning group under section 302(c) of the Trade Expansion Act of 1962 before April 3, 1975; and

(c) The new petition under section 221 of the Act is filed not later than July 2, 1975.

§ 90.36 Computation of time.

(a) The time periods specified in §§ 90.13(a), 90.18(a), and 90.19(a) will be computed by counting the day after publication in the FEDERAL REGISTER as one, and by counting each succeeding day, including Saturdays, Sundays, and holidays. However, when the final day would fall on a Saturday, Sunday or holiday, the time period will terminate at the end of the next succeeding Federal business day.

(b) The 60-day time period specified in Section 223(a) of the Act will be computed in the same manner as set forth in paragraph (a) of this section, except that the day after the date of filing of the petition shall be counted as the first day.

[FR Doc.77-1289 Filed 1-13-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

[30 CFR Part 11]

SINGLE-USE GAS AND VAPOR CHEMICAL-CARTRIDGE RESPIRATORS

Public Hearing

On October 13, 1976, the Secretaries of the Interior and Health, Education, and Welfare published in the FEDERAL REGISTER (41 FR 44864) proposed amendments to Part 11 of Title 30, Code of Federal Regulations to (1) clarify the use of gas masks and chemical-cartridge respirators against gases and vapors with poor warning properties, (2) permit the use of Type A supplied-air respirators only in atmospheres not immediately dangerous to life or health, (3) provide new performance requirements for the approval of single-use gas and vapor chemical-cartridge respirators that are equivalent in performance to the present requirements for chemical-cartridge respirators, (4) revise performance requirements for vinyl chloride chemical-cartridge respirators by reducing the minimum service life from two hours to 90 minutes, and (5) provide for the approval of single-use vinyl chloride respirators which have performance requirements equivalent to the present requirements for vinyl chloride chemical-cartridge respirators.

Interested persons were afforded a period of 30 days within which to submit comments, suggestions, or objections to the proposed amendments. Comments were received from manufacturers of respiratory equipment as well as from a large company that utilizes respiratory equipment in the manufacture of vinyl chloride and polyvinyl chloride. The comments received in response to the notice of proposed rulemaking are on file at the Regulations Office, National Institute for Occupational Safety and Health (NIOSH), 5600 Fishers Lane (Park Building Room 3-32), Rockville, Maryland 20857.

It is Department of Health, Education, and Welfare policy to hold public hearings to receive information and views on proposed regulations if it appears that such hearings will aid the Department in developing a position on any of the issues involved (41 FR 34811). In view of this policy and in response to a written request from a member of the public for a hearing, NIOSH and the Mining Enforcement and Safety Administration (MESA) have determined that it would be in the public interest to hold a hearing to obtain additional information with regard to the proposed regulations specifically with respect to the following subjects:

1. The proposed definition of "single-use respirator."

2. The proposed performance requirements for the approval of single-use gas and vapor chemical-cartridge respirators.

3. The proposed requirements for vinyl chloride chemical-cartridge respirators.

4. The proposed performance requirements for single-use vinyl chloride respirators.

The hearing will be held on February 14, 1977, at 9:30 a.m. in Conference Room G of the Department of Health, Education, and Welfare's Parklawn Building, 5600 Fishers Lane, Rockville, Maryland. The hearing will be conducted in an informal manner by a panel comprised of representatives of NIOSH and will be chaired by Mr. John Moran, Special Assistant for Safety and Testing and Certification, NIOSH. Mr. Earle Shoub, Associate Director, Appalachian Laboratory for Occupational Safety and Health, NIOSH, is designated as alternate chairman. Representatives from MESA and the Occupational Safety and Health Administration have been invited to participate on the panel.

Persons making statements need not be sworn or make affirmation. Each such person shall be given the opportunity to make a statement concerning the issues under consideration, an opportunity to make supplementary statements, which may include comments on or rebuttal of other persons' views, and an opportunity to make recommendations concerning the issues in any of the statements.

Interested persons who wish to present pertinent comments at the hearing should write to the Regulations Officer, NIOSH, at the above address, not later than 7 days before the meeting, advising of the approximate time needed to present such comments. For those persons who cannot participate in the hearing, written comments may be submitted to the Regulations Officer. A verbatim record of the proceedings will be maintained and all written statements and data received by February 28 will be made part of the record.

Dated: January 11, 1977.

EDWARD J. BAIER,
Acting Director, National Institute for Occupational Safety and Health.

[FR Doc.77-1224 Filed 1-13-77;8:45 am]

Public Health Service

[42 CFR Part 54b]

GRANTS FOR DRUG ABUSE PREVENTION, TREATMENT AND REHABILITATION

Proposed Revision of State Grants Regulations

Notice is given that the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposes to revise Part 54b of Title 42, Code of Federal Regulations, currently entitled "Grants to States for Drug Abuse Prevention Functions".

Part 54b was established on February 21, 1973, by the publication of regulations (38 FR 4715) which set forth only the formula for allotting the sums appropriated under section 409 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1176) to the States. The formula was amended on April 22, 1974 (39 FR 14209). Regulations further amending the formula were promulgated on June 24, 1976 (41 FR 26010).

On August 28, 1973, it was proposed (38 FR 22968) to revise Part 54b by: (1) establishing a Subpart A setting forth the allotment formula and detailed requirements for grants to States from their respective allotments, including requirements for the preparation and administration of State plans for planning, establishing, conducting, and coordinating projects for the development of more effective drug abuse prevention functions in the State and for evaluating the conduct of such functions in the State; and, (2) establishing and reserving a Subpart B for regulations governing the drug abuse project grants authorized by section 410 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1177).

Due to the passage of time since those regulations were proposed and substantial amendments to the provisions which were proposed therein, it has been determined that the proposed regulations should be republished as a notice of proposed rulemaking.

Following a review of the written comments on the August 28, 1973, notice of proposed rulemaking, the following changes have been made:

A. *Summary of changes based on comments received.* 1. Several comments suggested that the language of § 54b.105,

"Grants for preparation of State plans", be amended to clarify that any surplus resulting from those grants may be utilized for the payment of costs incurred in carrying out projects under and otherwise implementing the approved State plan and evaluating the results of such implementation. Because all States have now submitted and received approval of their initial State plans there is no further need for grants for the preparation of State plans. Accordingly, the proposed section establishing requirements for such grants has been deleted. As set forth in § 54b.118 and § 54b.119 of the regulations proposed in this notice a State which has met the eligibility requirements now receives a single grant from its allotment. The grant funds may be used for the payment of costs incurred in preparing modifications of the approved State plan as well as for the payment of costs incurred in administering, implementing, and evaluating the approved State plan. Expenditures for each of these three categories must, however, be separately identified.

2. A new paragraph (e), "Substate planning", has been added to § 54b.111, "State plan; survey of need; resource allocation plan". The new paragraph requires inclusion of information relating to the needs and current and projected resources of substate regional, county and other local areas in the survey of need and resource allocation plan. To ensure such inclusion the State plan must incorporate by reference procedures for the solicitation and consideration of planning information from elected officials of local units of government and organizations and individuals engaged in the provision of direct or ancillary drug abuse prevention, treatment, and rehabilitation services.

3. The provision (§ 54b.110(d)(2)), requiring the State agency to submit to the Secretary copies of the records of the recommendations made to it by the State Drug Abuse Advisory Council and, if such recommendations are not adopted, the reasons therefor, has been deleted. The provision requiring the maintenance of such records has, however, been retained. Under the uniform administrative requirements of Subpart D of 45 CFR Part 74 the Secretary and the Comptroller General of the United States or any of their duly authorized representatives must be afforded access to such records.

4. A number of the comments made inquiries with respect to the meaning of the maintenance of effort requirements which were set forth at § 54b.120(a) of the August 28, 1973, proposal and which are set forth with the change noted below at § 54b.117(a) of the regulations proposed herein. Under these requirements, which are specifically required by section 409(e)(11) of the Act, the level of State, local, and other non-Federal funds expended during any fiscal year for projects and activities which receive support from the Federal funds allotted to the State may not be lower than the level of such expenditures for the preceding fiscal year, except that the Secretary may take into consideration the extent to which the level of expenditures for any year included activities of a nonrecurring nature. The maintenance of effort requirements have been written to clearly state that it is the aggregate level of State, local, and other non-Federal expenditures for programs carried out under the State plan which must be maintained. From year to year, these funds may be furnished by different sources; not necessarily by the specific agencies which initially furnished such funds. That is, the Federal funds cannot be used to replace the total of the State, local, and other non-Federal funds which would otherwise be available. This assures that the Federal funds will be used to improve and expand the State and local drug abuse prevention, treatment, and rehabilitation programs.

B. *Other changes.* 1. Because the uniform administrative requirements and cost principles set forth in 45 CFR Part 74 are applicable to all grants made under the proposed Subpart A (See the new § 54b.102), the following sections of the proposed regulations, which contained such requirements, have been deleted: § 54b.115, "Property management."; § 54b.116, "State plan; subgrants."; § 54b.117, "Contract procurement standards; State and subgrantees."; § 54b.118, "Records."; § 54b.119, "Reports."; and, § 54b.122, "Grant suspension and termination.". In addition, § 54b.114 has been shortened through a reference to the pertinent requirements of 45 CFR Part 74.

2. Section 54b.106, "State plan; submission and review.", has been amended to clarify that information which must be "incorporated by reference" in the State plan and that which must be "contained" in the plan. In addition, paragraph (a) of § 54b.106 has been amended to implement the new statutory provisions, which became effective on January 1, 1976, requiring the submission of State plans to the Secretary not later than July 15 of each calendar year and requiring that the State plans pertain to the twelve month period commencing October 1 of the calendar year of the submission. (See section 409(e) of the Act as amended by sec. 9(a)(1) of Pub. L. 94-237 (21 U.S.C. 1176(e)).) Paragraph (c), "Review and comment by the Governor," of § 54b.106 has been changed to require that: (1) the State plan or modification thereof must be submitted to the Governor of the State at least 45 days prior to submission to the Secretary; and, (2) if the Governor makes no comments, such documentation thereof as the Secretary may prescribe must be submitted to the Secretary with the State plan or modification.

3. A sentence implementing the new statutory provision allowing drug abuse State plans to contain provisions relating to alcoholism or mental health, section 409(f) of the Act as amended by sec. 9(b)(1) of Pub. L. 94-237 (21 U.S.C. 1176(f)), has been added to § 54b.107(b) of the proposed regulations.

4. Section 54b.107(b)(2) and § 54b.108(a) have been amended by adding references to, respectively, mental health planning and mental health planning agencies.

5. The provision relating to expenses of the State Drug Abuse Advisory Council which may be charged to grant funds (§ 54b.113(a)(1)(ii)) has been modified and moved to § 54b.110 as a new paragraph (e). As modified, the provision limits the total payments for Council expenses from the grant funds to one percent (1%) of the State's total allotment, unless the prior approval of the Secretary is obtained.

6. The last sentence of subparagraph (a)(1) of § 54b.111, "State plan; survey of need; resource allocation plan.", requiring each State to initiate a survey to determine the total number of chronic drug abusers in the State through an unduplicated count, has been deleted. After consultation with representatives of State drug abuse agencies it has been determined that: (a) given the level of the Federal formula grant support, the costs of such surveys are very high; (b) the survey data would not adequately assess the problem in a manner that could be meaningfully interpreted and utilized in the State planning process; and, (c) there is available currently nationwide data on characteristics of the population at risk which can be utilized in the State planning process.

7. Paragraphs (a) and (b) § 54b.112 have been amended to implement the new statutory provision, which became effective on January 1, 1976, requiring State plans to provide reasonable assurances that treatment or rehabilitation projects supported by funds from a State's allotment have provided to the State agency a proposed performance standard or standards to measure, or research protocol to determine, the effectiveness of the treatment or rehabilitation programs or projects. (See section 409(e)(12) of the Act added by sec. 9(a)(1)(F) of Pub. L. 94-237 (21 U.S.C. 1176(e)(12)).)

8. The provisions of § 54b.113, governing the expenditure of grant funds for the State administrative expenses of carrying out the approved State plan have been modified and moved to the new § 54b.119. Thus, the title of § 54b.113 has been changed from "State plan; administration." to "State plan; personnel administration.". Under the new § 54b.119 a State is authorized to expend funds from its single grant for allowable administrative expenses (the provision in the August 28, 1973 proposed regulations required the States to make a separate application for funds to be used for the payment of administrative expenses), but such expenditures must be separately identified and cannot, as prescribed by section 409(b)(3) of the Drug Abuse Office and Treatment Act of 1972, (21 U.S.C. 1176(b)(3)), for any year exceed $50,000 or 10 percent of the total allotment of the State for that year, whichever is less.

9. The provision which referred to the requirements of section 408 of the Drug

Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) for maintaining the confidentiality of drug abuse patient records (§ 54b.118(h) of the August 28, 1973, proposal) has been modified to reflect an amendment of the statutory provision (section 303(a) of Pub. L. 93–282) and the promulgation of new regulations thereunder (42 CFR Part 2) and moved to a new § 54b.115.

10. An amended nondiscrimination section, § 54b.116, has been added. This section consists of: (a) the provision referring to the requirements of Title VI of the Civil Rights Act of 1964 and the regulations promulgated thereunder which was § 54b.121 in the August 28, 1973, proposed regulations; (b) a new provision referring to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, prohibiting discrimination against handicapped individuals in programs receiving Federal financial assistance; and (c) a modification of the provision relating to the admission of drug abusers to Federally assisted private and public general hospitals which appeared as § 54b.120(c) of the August 28, 1973, proposed regulations. As modified, that provision requires the State plan to describe policies and procedures under which the State agency will take an active role in monitoring compliance with section 407 of the Drug Abuse Office and Treatment Act of 1972, as amended by Public Law 94–237 (21 U.S.C. 1174), which provides that drug-abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their drug abuse or drug dependence, by any private or public general hospital which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

11. As noted above, in paragraph A.1, two new sections, § 54b.118, "Grant award and payment." and § 54b.119, "Expenditure of grant funds." have been added. These sections establish a grant award process under which each State having an approved State plan or modification thereof for a fiscal year will receive a single grant from its allotment for that fiscal year. That grant may be expended for preparing, carrying out and evaluating, and administering the State plan, but expenditures in each of the three categories must be accounted for separately. Proposed uses of Federal funds made available to a State through the drug abuse formula grants to which these proposed regulations apply are, under Title XV of the Public Health Service Act as amended by Public Law 94–237, subject to review and approval or disapproval by the appropriate Health Systems Agency (HSA), if any, established thereunder. This requirement is implemented by paragraph (b) of § 54b.119 of the proposed regulations.

12. Other minor changes have been made either to correct typographical errors or to effect solely technical matters.

C. *Summary of major substantive comments.* 1. It was suggested that the composition of the State Drug Abuse Advisory Council should be specified in greater detail in order to assure more local, nongovernmental involvement in the planning process. Since section 409 of the Act requires the Secretary to approve a State plan which complies with the statutory provisions, the Secretary may not mandate the composition of the Council in greater detail than that set forth in the statute. The proposed regulatory provision complies with the statutory requirements which give the States discretion in appointing Council members while assuring the inclusion of representatives of both governmental and nongovernmental interests from different geographical areas of the State.

2. A suggestion that the single State agencies be given the authority to review and comment upon all applications for Federal funds for drug abuse prevention, treatment and rehabilitation activities was not accepted because of the lack of specific legal authority to impose such a requirement, particularly with respect to those grant programs which are not administered by the Secretary.

3. One comment suggested that the provisions of § 54b.108(b)(2) be amended to provide for an extension of the 30 day maximum period afforded for State agency review of applications for drug abuse project assistance under section 410 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1177). The 30 day maximum period is established by section 410(c)(2) of the Act. Accordingly, the Secretary lacks authority to grant an extension of that period.

4. Another comment took exception to the requirement that the State plan incorporate by reference professional standards to be followed in hiring employees, other than those who would be under a governmental merit system, to carry out activities under the State plan (§ 54b.113(b)(4) of the August 28, 1973, proposal, § 54b.113(b) of this proposal). This requirement has been retained because of the necessity for ensuring that the services provided by professionals under the State plan meet uniform, minimum standards of quality.

5. One comment stated that the State plan should include provisions relating to the development of more effective services for non-addicted drug users as well as provisions relating to services for addicts and other "hard drug users". While the State plan relates to all types of drug abuse problems, the priorities assigned to the various types of services are determined by the States. Community education and other prevention programs, which were also requested, are encompassed by the State plan.

With the changes noted above, the regulations proposed on August 28, 1973, (38 FR 22968) are being republished as a notice of proposed rulemaking in order to provide an adequate opportunity for public comment on the proposed regulations.

The new regulations policies of the Department issued July 25, 1976 (41 FR 43811, August 17, 1976) require that this Notice of Proposed Rulemaking (NPRM) have an implementation plan prepared prior to issuance. In compliance with these requirements, an implementation plan was forwarded to the Secretary and he has authorized the issuance of this NPRM without the use of a Notice of Intent (NOI) because:

(a) There is an urgent need for these regulations.

(b) Over an extended period of time there has been interaction between the Department and organizations and individuals in the development of this NPRM which has satisfied the spirit and intent of the NOI. In addition to the extensive public comments on the original NPRM, a preliminary draft of the regulations proposed in this NPRM was discussed thoroughly with the drug abuse authorities of the States and with other concerned non-Federal groups and individuals.

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed revision of 42 CFR Part 54b to the National Institute on Drug Abuse, Rockwall Building, 1140 Rockville Pike, Rockville, MD. 20852, on or before February 28, 1977, except that comments are not invited with regard to § 54b.101 and § 54b.104 of the proposed regulations. Section 54b.101 is now in effect as a part of the current Part 54b. Section 54b.104 of the proposed regulations sets forth the allotment formula, which appears as § 54b.102 of the current Part 54b, with the amendments which were promulgated on June 24, 1976 (41 FR 26010). These sections are included in this notice of proposed rulemaking only for the purpose of providing a complete regulation.

Comments received will be available for public inspection at Room 700, Rockwall Building, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

This revision is proposed under the authority of section 409 of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1176).

It is, therefore, proposed to revise Part 54b of Title 42 CFR in the manner set forth below.

The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

(Catalog of Federal Domestic Assistance Program Number 13.269, Mental Health—Drug Abuse Formula Grants.)

Dated: December 6, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

APPROVED: January 4, 1977.

MARJORIE LYNCH,
Acting Secretary.

It is proposed to revise Part 54b to read as follows:

PART 54b—GRANTS FOR DRUG ABUSE PREVENTION TREATMENT AND REHABILITATION

Subpart A—Grants to States for Drug Abuse Prevention Functions

Subpart B [Reserved]

AUTHORITY: Sec. 409, Pub. L. 92-255, 86 Stat. 80; as amended by Pub. L. 94-237, 90 Stat. 245-247 (21 U.S.C. 1176).

Subpart A—Grants to States for Drug Abuse Prevention Functions

§ 54b.101 Applicability.

The regulations of this subpart apply only to grants under section 409 of the Act to assist the States in the preparation of plans for planning, establishing, conducting, and coordinating projects for the development of more effective drug abuse prevention functions in each State; in carrying out projects under and otherwise implementing such plans; in evaluating the results of such plans as implemented; and in paying the administrative expenses of carrying out such plans.

§ 54b.102 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this subpart.

§ 54b.103 Definitions.

All terms not defined herein shall have the same meanings as given them in the Act. As used in the subpart:

(a) "Act" means the Drug Abuse Office and Treatment Act of 1972 as amended by Pub. L. 94-237, 90 Stat. 241-249, (21 U.S.C. 1101 et seq.).

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority has been delegated.

(c) "State" means the 50 states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(d) "State plan" means the plan for planning, establishing, conducting, and coordinating projects for the development of more effective drug abuse prevention functions in the State and for evaluating the conduct of such functions which contains the information, proposals, and assurances required by section 409 of the Act and the regulations of this subpart.

(e) "State agency" means the single State agency, which may be an individual agency or an interdepartmental agency, designated by the State as the sole agency for the preparation and administration of the State plan or for supervising the preparation and administration of the State plan.

(f) "Population", with respect to any State or area thereof, means the latest figures of total population certified by the United States Department of Commerce.

§ 54b.104 Allotments.

(a) *Allotments to States.* The allotments to the States under section 409 of the Act will be computed by the Secretary as follows:

(1) One-third weight on the basis of the relationship of the population in each State to the total population of all the States;

(2) One-third weight on the basis of total population weighted by financial need as determined by the relative per capita income for each State for the three most recent consecutive years for which data is available from the Department of Commerce; and

(3) One-third weight on the basis of need for more effective conduct of drug abuse prevention functions as determined by the following three equally weighted factors

(i) The relationship of the population age twelve through twenty-four in each State to the total population of that age group in all the States on the basis of data from the U.S. Census Bureau for the most recent calendar year

(ii) The relationship of the number of hepatitis, Type B, cases in each State to the total number of those cases in all the States, determined on the basis of data available from the Center for Disease Control, United States Public Health Service for the most recent calendar year, or where a State does not report to the Center for Disease Control on the basis of data available from a comparable State reporting system; and

(iii) The standing, in relation to all other States, of each State's per capita appropriation of State funds for "drug abuse prevention functions," as defined by section 103(b) of the Act (21 U.S.C. 1103(b)), determined on the basis of data certified by each State Comptroller or equivalent State official.

(b) If, after determining the amount of the allotment for each State in accordance with paragraph (a) of this section, it appears that any State (with the exception of the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) would receive less than the minimum allotment prescribed by section 409(c)(1)(A) of the Act, the Secretary will reduce the shares of each State which would receive more than such minimum allotment by an equal percentage and reallocate such sums as required to assure that every State (other than the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) will receive at least the prescribed minimum allotment.

§ 54b.105 Transfer of allotments.

(a) *Allotments to the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.* Any amount allotted to any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico for a fiscal year which remains unobligated at the end of that fiscal year shall remain available to such State, for the purposes for which made, for the next fiscal year and any such amount shall be in addition to the amounts allotted to such State for such next fiscal year, except that any amount remaining unobligated at the end of the sixth month following the end of the fiscal year for which such amount was allotted may be reallotted by the Secretary to any other of the States having need therefor, on such basis as the Secretary deems equitable and consistent with the purposes of the Act, if the Secretary determines that such amounts will remain unobligated at the end of the next fiscal year following the fiscal year for which such amounts were allotted. Funds thus reallotted to any of the States shall be available for the purposes for which made until the close of the fiscal year following the fiscal year for which such funds were allotted. Any amount so reallotted shall be in addition to the amounts allotted and available for the same period.

(b) *Allotments to the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.* Any amount allotted to the Virgin Islands, American Samoa, Guam, or the Trust Territory of the Pacific Islands for a fiscal year which remains unobligated at the end of that year shall remain available for the purposes for which made for the next two fiscal years and any such amount shall be in addition to the amounts allotted for each of the next two fiscal years, except that any amount remaining unobligated at the close of the first of such next two fiscal years, which the Secretary determines will remain unobligated at the close of the second of such next two fiscal years, may be reallotted by the Secretary to any other of the four States (Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) which has a need therefor, on such basis as the Secretary deems equitable and consistent with the purposes of the Act, to be available until the close of the second of such next two fiscal years. Any amount so reallotted shall be in addition to the amounts allotted and available for the same period.

(c) *Reallotment determination.* In determining whether a reallotment of funds to a particular State would be equitable and consistent with the pur-

poses of the Act, the Secretary will consider:

(1) The extent to which the proposed recipient State has demonstrated a high incidence of drug abuse problems in its general population;

(2) The extent to which the proposed recipient State has demonstrated an urgent need for drug abuse services for a specific target population group;

(3) The extent to which the proposed recipient State is effectively implementing its State plan provisions for drug abuse services; and

(4) Such other factors as the Secretary may find to be relevant.

(d) *Reports.* In order to assist the Secretary in making the reallotments authorized by the Act and this section each State shall, with respect to each fiscal year for which it receives an allotment, submit a report to the Secretary describing in detail how it plans to obligate funds from the allotment which have not been obligated by the date of the report and what funds, if any, it does not plan to obligate during the period in which such funds are available for obligation.

(1) Each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico shall submit the report within 60 days of the end of the fiscal year for which the allotment was made.

(2) The Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands shall submit such report within 60 days of the end of the first fiscal year following the fiscal year for which the allotment was made.

§ 54b.106 State plan; submission and review.

(a) *Submission.* In order to receive funds from its allotment for a fiscal year for the purposes authorized by section 409 of the Act, a State must submit to the Secretary not later than July 15 of each calendar year and have approved a State plan pertaining to the twelve month period commencing October 1 of the calendar year of the submission which contains or, as required by these regulations, incorporates by reference the information, proposals, and assurances specified in the Act and the regulations of this subpart. Documents incorporated by reference become a part of the State plan as though fully set forth therein. Such documents must be:

(1) Clearly identified as to subject, date and location,

(2) Officially adopted and disseminated in accordance with applicable procedures, and

(3) Made available to the Secretary and to the public for inspection.

(b) *Review.* The State agency shall from time to time, but not less often than annually, review its State plan and submit to the Secretary for approval modifications thereof which shall:

(1) Contain budgetary requirements for the new fiscal year and such updates of the assurances and the other information, which under this subpart must be contained in the State plan, as may be prescribed by the Secretary; and

(2) Incorporate by reference such changes in the proposals and information, which under this subpart must be incorporated by reference in the State plan, as may be prescribed by the Secretary and such additional changes in such information as the State agency may consider to be necessary.

(c) *Review and comment by the Governor.* The State plan or any modification thereof shall be submitted to the Governor of the State for his review and comment at least 45 days prior to submission of the plan or modification to the Secretary. The comments of the Governor or such documentation of his review without comment as the Secretary may prescribe must be submitted to the Secretary with such plan or modification.

(d) *Publicizing the State plan.* Concurrently with submission to the Secretary of the State plan or any modification thereof, the State agency shall publicize a general description of the proposed plan or modification. The State plan and modifications thereof shall be readily available and accessible for examination and comment by interested persons both prior to and after submission of such plan or modification to the Secretary.

§ 54b.107 State plan; purpose; consistency with other plans.

(a) *Purpose.* The purpose of the State plan is to provide a rational and more effective basis for the utilization of Federal, State, and all other available resources in establishing, conducting, maintaining, and evaluating all drug abuse prevention functions within the State, and for ongoing planning for improvement or expansion of such functions as necessary.

(b) The State plan may contain provisions relating to alcoholism or mental health. As a minimum, the State plan must incorporate by reference documents demonstrating:

(1) (i) That it is, to the extent practicable, consistent with the planning for drug abuse services in:

(A) the State plan for comprehensive health planning approved annually under section 314(a) of the Public Health Service Act (42 U.S.C. 246(a)) or section 1524(c)(2) of the Public Health Service Act (42 U.S.C. 300m-3(c)(2)), whichever is applicable; and

(B) the State plan for comprehensive mental health services approved annually under section 237 of the Community Mental Health Centers Act (42 U.S.C. 2689t).

(ii) That cognizance has been taken of other Statewide and local plans for drug abuse planning in the State.

(2) That cognizance has been taken of area-wide or substate regional planning in such areas as comprehensive health, mental health, vocational rehabilitation, urban development, alcoholism, corrections, and welfare services, including any pertinent plans developed pursuant to section 314(b) of the Public Health Service Act (42 U.S.C. 246(b)) or section 1513(b) of the Public Health Service Act (42 U.S.C. 3001-2(b)), whichever is applicable.

(3) That in cases where services or activities are to be provided across State lines, such services or activities are consistent with the drug abuse plan or plans of the State or States concerned.

(4) That there has been, to the maximum extent practicable, coordination with city, metropolitan area, substate regional, or interstate planning agencies to achieve consistency in planning for drug abuse prevention functions and consistency with other health, vocational rehabilitation, welfare, and physical development plans.

§ 54b.108 State plan; coordination.

The State plan must incorporate by reference policies and procedures for coordinating all drug abuse prevention functions planned or implemented by governmental and nongovernmental agencies, organizations, groups, or individuals within the State to assure that all such efforts are nonduplicative and are consistent with the State plan, including policies and procedures under which the State agency will:

(a) Provide consultation to, and consult with, other State and local agencies concerned with health, mental health, vocational rehabilitation, law enforcement, education, and other related planning activities which affect or are related to the State plan.

(b) Review applications for assistance under section 410 of the Act, except that the State plan may contain a written waiver of the right of review with respect to all or certain categories of applications for assistance under section 410. If the State plan does not include a waiver of all such review rights, it must incorporate by reference policies and procedures for review which shall provide that the State agency will:

(1) Prepare a written evaluation of the project described in the application which shall include comments on the relationship of the project to other projects pending and approved and to the State plan;

(2) Submit such evaluation to the Secretary within 30 days of the date upon which the State agency received the application for assistance; and

(3) Furnish a copy of the evaluation to the applicant;

(c) Review and comment upon other proposals for drug abuse prevention functions to be conducted within the State which are submitted to it for this purpose by other agencies or organizations.

(d) Ensure that agencies or authorities which have interests or responsibilities related to the project and program proposals developed or reviewed by the State agency have been afforded a reasonable opportunity to review such proposals.

(e) Obtain such data and information from other organizations and individuals as may be necessary to implement and modify the State plan and incorpo-

rate such data and information into a management information system at the State level, which shall be, to the extent practicable, consistent with Federal information systems.

(f) Inform interested agencies and organizations and the general public about the agency's activities and recommendations, including information about scientific, technological, and programmatic advances in drug abuse prevention functions.

(g) Provide advice and guidance to State and local governmental officials and legislators in the development of laws, regulations, or policies on all matters pertaining to drug abuse prevention functions.

§ 54b.109 State plan; single State agency.

(a) The State plan must incorporate by reference documentary evidence of the designation or establishment of a single State agency. Such documentation shall include:

(1) The Executive Order, Statute, resolution, motion or similar action by the State authority which designated or established the State agency; and

(2) Evidence that the State agency has legal authority to carry out on behalf of the State all duties and responsibilities required by the Act and by the regulations of this subpart.

(b) The State agency may have designated responsibilities for State alcohol abuse and alcoholism programs as well as State drug abuse programs, except that the State plan must incorporate by reference documents which identify the officials who will head each area of responsibility, and which establish policies and procedures for ensuring that separate records are maintained with respect to the alcohol abuse and drug abuse programs and that all other Federal requirements applicable to each such program are met.

(c) If part or all of the responsibility for preparing or administering the State plan has been or is to be delegated to one or more agencies (under the supervision of the State agency), the State plan must incorporate by reference documents which identify such other agency or agencies, and set forth the responsibilities of each such agency.

§ 54b.110 State plan; State advisory council.

(a) *Establishment; scope of authority.* The State plan must incorporate by reference documents which provide for the establishment of a State Drug Abuse Advisory Council to consult with and advise the State agency in carriyng out the State plan.

(b) *Membership; selection.* The State Drug Abuse Advisory Council shall, as a minimum, include representatives of public and nongovernmental organizations or groups, and of agencies concerned with drug abuse prevention functions from different geographical areas of the State.

(1) Representatives of nongovernmental organizations and groups and of public agencies which are in frequent contact with drug abusers are eligible for membership on the Council even though such organizations, groups, or agencies are not engaged in the direct provision of drug abuse prevention, treatment or rehabilitation services. For example, representatives of welfare agencies, vocational rehabilitation agencies, police, schools, courts, citizen groups, employee groups, and employers' organizations would be eligible for Council membership.

(2) The State plan shall incorporate by reference the policies and procedures for selection of the Council members, and shall contain a list of members for the current fiscal year, their names, addresses, occupations, and affiliations.

(c) *Multi-purpose councils.* The State plan may establish a new council or designate an existing council established for some other purpose (for example a planning advisory council or joint drug abuse and alcoholism council) to perform the duties of the State Drug Abuse Advisory Council, except that the membership, when sitting as the State Drug Abuse Advisory Council, must meet the requirements of this section.

(d) *Meetings; recommendations.* (1) The State plan shall incorporate by reference guidelines and instructions establishing the time, place, and frequency of meetings of the Council which shall provide, as a minimum, for annual meetings of the Council.

(2) The State agency shall maintain, on an annual basis, records of the recommendations made to it by the State Drug Abuse Advisory Council and, if such recommendations are not adopted the reasons therefor.

(e) *Expenses.* Funds awarded to a State from its allotment may be used to pay the expenses of the State Drug Abuse Advisory Council, including per diem and travel expenses incurred by Council members at rates not exceeding those established under applicable State law. However, the total payments for the expenses of the Council shall not exceed one percent (1%) of the State's total allotment, unless the prior approval of the Secretary is obtained.

§ 54b.111 State plan; survey of need; resource allocation plan.

(a) *Need.* The State plan must contain an assessment of the need for drug abuse programs throughout the State. Such assessment shall include:

(1) An assessment of the extent of the problem of drug abuse and drug dependency in various geographic areas and subareas of the State, including estimates (and the basis for these estimates) of the number of drug abusers as measured by the best available set of drug abuse indicators in the area under consideration.

(2) A description of factors which may relate to the extent and severity of the drug abuse or drug dependence problem including economic factors, special health, vocational, or social problems, special problems of urban and suburban settings, drug abuse in the context of law enforcement and crimfnal justice, and ethnic and geographic factors.

(3) A description of the special needs of specific high risk or target population groups in the State.

(4) A description of financial support currently provided for drug abuse treatment, vocational rehabilitation, prevention, education, and training, including third party payments, charitable contributions, county bond issues, grants for law enforcement and criminal justice, and all other Federal, State, and local public or private funds provided for drug abuse programs within the State.

(b) *Current Resources.* The State plan shall contain a description of the present availability and accessibility of all public and private health and related resources and programs for serving the needs of drug abusers and drug dependent individuals within the State, which shall include:

(1) Resources available from and services currently provided by: (i) State and local governments; (ii) Public and private employers for their employees; (iii) Self-help groups; and (iv) Public and private health care facilities such as hospitals, community mental health centers, and neighborhood health centers; and

(2) An estimate of the number of available personnel who are qualified to provide such services and a description of their training and experience.

(c) *Additional resources needed.* The State plan must contain a description of the additional resources, including facilities and personnel, training, technical assistance, and funds necessary to meet those needs identified pursuant to paragraph (a) of this section which are not being met by the existing resources described pursuant to paragraph (b) of this section.

(d) *Action plan.* The State plan must contain an action plan which:

(1) Describes the steps necessary to secure and develop the necessary resources described in paragraph (c) of this section;

(2) Establishes priorities for distribution of facilities and services, including drug abuse treatment and rehabilitation services provided by community mental health centers, in all geographic areas and subareas of the State;

(3) Sets forth, in the order of such priorities, the additional projects and programs required to meet the unmet need, the estimated costs of each and the source of financial and other resources expected to support each project or program, including those drug abuse prevention functions to be supported with funds made available under section 409 of the Act and the regulations of this subpart;

(4) Includes a timetable for completing all such projects and programs; and

(5) Includes a long-term plan for expansion or diminution of existing resources or development of new resources in acordance with projected estimates of future needs.

(e) *Substate planning.* The survey of need and resource allocation plan must

include information relating to the needs and current and projected resources of substate regional, county, and other local areas. To ensure such inclusion the State plan must incorporate by reference procedures under which the State agency will, as a part of the State planning process:

(1) Solicit such information from elected officials of local units of government (e.g., county and metropolitan) and organizations and individuals engaged in the provision of direct or ancillary drug abuse prevention, treatment, and rehabilitation services; and

(2) Take such information into account in the preparation of the survey of need and resource allocation plan, particularly with respect to the planning of programs to meet the need for services in the respective substate regional, county, and other local areas.

§ 54b.112 State plan; monitoring and reporting of program performance.

(a) *Assurance.* The State plan shall contain an assurance that the State agency has established policies and procedures to ensure that treatment or rehabilitation projects or programs supported by funds from the State's allotment will provide to the State agency a proposed performance standard, or standards to measure, or research protocol to determine, the effectiveness of such treatment or rehabilitation programs or projects.

(b) *Review; monitoring of performance.* The State plan shall incorporate by reference the policies and procedures established pursuant to the assurance required under paragraph (a) of this section and policies and procedures under which the State agency will:

(1) From time to time, but not less often than annually, review its State plan and submit modifications thereof to the Secretary as required by §54b.106 (b);

(2) Constantly monitor and review the performance of all programs and activities receiving support from the State's allotment in order to assure that adequate progress is being made towards achieving the goals of such programs and activities; and

(3) Submit, not later than 90 days after the end of each fiscal year (The Secretary may approve a request for an extension of such due date if he determines that the request is justified.), a performance report which shall analyze and evaluate the effectiveness of the prevention and treatment programs and activities carried out under the plan. Copies of the performance report shall be furnished to the agency or agencies having direct responsibility for enforcing the State standards for maintenance and operation of prevention, treatment, and rehabilitation facilities and programs.

(c) *Contents of performance report.* The performance report shall contain the following information with respect to each program, function, or activity carried out under the State plan:

(1) A comparison of actual accomplishments to the goals established for the fiscal year. Where the output of a particular activity or program can be readily quantified, such quantitative data should be related to cost data for computation of unit costs;

(2) Reasons for failure to attain established goals; and

(3) Such other pertinent information as the Secretary may prescribe including, when appropriate, an analysis and explanation of cost overruns or high unit costs.

(d) *Interim reporting.* States shall promptly inform the Secretary in writing of events occurring between the scheduled performance reporting dates which have significant impact upon the program or activity supported with funds from the State allotment. The following types of conditions are subject to this prompt reporting requirement:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain the objectives of the programs and activities receiving support from the State's allotment. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any additional Federal assistance needed to resolve the situation; and

(2) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

(e) *Site visits by the Secretary.* Site visits will be made by representatives of the Secretary as frequently as practicable to:

(1) Review program accomplishments and management control systems; and

(2) Provide such technical assistance as may be required.

§ 54b.113 State plan; personnel administration.

(a) *Merit system personnel.* (1) The State plan shall provide for the establishment and maintenance of personnel standards on a merit basis for persons employed by the State agency in the administration or supervision of the administration of the State plan. Conformity with Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Health, Education, and Welfare, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Public Law 91-648; 84 Stat. 1915) modifying or superseding such standards, will be deemed to meet this requirement as determined by said Commission. Laws, rules, regulations, and policy statements, and amendments thereto, effectuating such methods of personnel administration shall be incorporated by reference in the State plan.

(2) *Equal employment opportunity.* Equal employment opportunity will be assured in the State merit system and affirmative action provided in its administration. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, or other nonmerit factors will be prohibited. Discrimination on the basis of age or sex or physical disability will be prohibited except where specfic age, sex, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration. The State merit system must include procedures for appeals in cases of alleged discrimination to an impartial body whose determination shall be binding upon a finding of discrimination. The State must develop an affirmative action plan to assure such equal employment opportunity which shall be subject to inspection, comment, and approval by the Secretary. Such plan shall contain such information and be completed on such date as the Secretary may prescribe.

(b) *Other personnel.* The State plan must incorporate by reference professional standards to be followed in hiring individuals (other than employees under a governmental merit system) to carry out activities related to the implementation of the State plan. Such standards shall include schedules or other bases upon which the salaries of such personnel are determined and paid which shall be in accord with the usual and customary practices in the State.

(c) *Nondiscrimination on the basis of prior drug abuse.* The State plan shall contain an assurance that the State will establish policies and procedures to assure that no qualified applicant for a position supported in whole or in part from funds made available from the State's allotment will be denied employment, solely on the basis of having or not having a prior history of drug abuse.

§ 54b.114 State plan; financial management systems.

The State plan shall incorporate by reference documents which provide for the establishment of a State financial management system and which describe policies and procedures under which subgrantees (public and nonprofit private agencies, institutions, and organizations receiving funds from the State's allotment) will be required to establish financial management systems. The State and subgrantee financial management systems must meet the standards set forth in Subpart H of 45 CFR Part 74.

§ 54b.115 Confidentiality of drug abuse patient records.

Attention is called to the provisions of section 408 of the Act (21 U.S.C. 1175) which provides that records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be confidential and may be disclosed only for the purposes and under the circumstances expressly authorized under section 408. Violations of section 408 of the Act are

subject to a fine of not more than $500 in the case of a first offense and not more than $5,000 in the case of each subsequent offense. A regulation implementing section 408 has been promulgated (42 CFR Part 2). Recipients of funds allotted to States under section 409 of the Act and the regulations of this subpart are subject to the provisions of section 408 of the Act and 42 CFR Part 2.

§ 54b.116 Nondiscrimination.

(a) *Race, color, national origin.* Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252) which provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). Such regulation is applicable to the drug abuse prevention functions receiving funds from the State's allotment under section 409 of the Act and requires receipt and acceptance by the Secretary of the applicable documentation set forth therein.

(b) *Handicapped individuals.* Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(c) *Admission of drug abusers to Federally assisted private and public general hospitals.* (1) Attention is called to section 407 of the Act, as amended by Pub. L. 94-237 (21 U.S.C. 1174) which provides that drug abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their drug abuse or drug dependence, by any private or public general hospital which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(2) *Assurance.* The State plan must contain an assurance that the State agency will monitor compliance with section 407 of the Act. A State will be considered to be in substantial compliance with this assurance if the Secretary finds that the State plan describes adequate methods, including implementation mechanisms for:

(i) Obtaining an assurance from each private or public general hospital receiving funds from the State's allotment that drug abusers and drug dependent persons will be admitted and treated on the basis of medical need and will not be discriminated against solely because of their drug abuse or drug dependence;

(ii) State agency evaluation of the admission and treatment policies and practices of those private and public general hospitals within the State which receive support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency to determine whether the requirements of section 407 of the Act are being complied with, including procedures for the investigation of complaints; and

(iii) State agency submission of written reports to the Secretary of any instance of noncompliance with the nondiscrimination requirements of section 407 of the Act.

§ 54b.117 Assurances.

In addition to any other assurances required by law and the regulations of this subpart the State plan must contain the following assurances:

(a) *Maintenance of effort.* An assurance that Federal funds made available under section 409 of the Act and the regulations of this subpart will be so used as to supplement and increase, to the extent feasible and practical, the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in section 409 of the Act and will in no event supplant such State, local, and other non-Federal funds. A State will be considered to be in substantial compliance with such assurance if the Secretary finds that the aggregate level of State, local, and other non-Federal funds expended for drug abuse prevention functions carried out under the State plan with Federal assistance made available under section 409 of the Act is no lower for any fiscal year than the aggregate level of those expenditures in the immediately preceding fiscal year, except that the Secretary may take into consideration the extent to which the level of such funds for any fiscal year may have included funds for an activity of a nonrecurring nature.

(b) *Community Service.* Assurances that all facilities, programs, and services supported in whole or in part with funds made available under section 409 of the Act and the regulations of this subpart will be:

(1) Made available without discrimination on the grounds of sex, creed, duration of residence, or ability or inability to pay for services;

(2) So publicized as to be generally known to the population to be served;

(3) Available to, and responsive to the needs of, all members of the population to be served; and

(4) So located as to be readily accessible to the population to be served.

(c) *Relocation assistance.* An assurance that the State agency will comply with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (Pub. L. 91-646), which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs, and the applicable regulations issued thereunder (45 CFR Part 15, as added by 36 FR 18838, September 22, 1971).

§ 54b.118 Grant award and payment.

(a) *Grant award.* Each State for which a State plan or modification thereof has been approved for a fiscal year will be awarded a grant from its allotment for that fiscal year. All grant awards shall be in writing and shall set forth the amount of funds granted and the period for which the funds will be available for obligation by the State.

(b) *Payment.* The Secretary shall from time to time make payments to a State of all or a portion of any grant award, either in advance or by way of reimbursement for authorized expenses incurred or to be incurred in carrying out the purposes of the grant, at such intervals and on such conditions as the Secretary finds necessary.

§ 54b.119 Expenditure of grant funds.

(a) Funds granted pursuant to this subpart may be expended by the States only for:

(1) The preparation of State plans and modifications thereof which are intended to meet the requirements of section 409 of the Act and the regulations of this subpart.

(2) Carrying out projects under and otherwise implementing the approved State plans and evaluating the results of the plans as actually implemented.

(3) The State administrative expenses of carrying out the approved State plan, except that the amount expended for that purpose for any fiscal year may not exceed $50,000 or 10 percent of the total allotment of the State for that year, whichever is less.

(b) In accordance with section 1513 (e) of the Public Health Service Act funds granted pursuant to this subpart may not be expended for grants or contracts for the development, expansion or support of health resources, unless the State has provided the appropriate health systems agency or agencies sixty days to make the review required by section 1513(e) and either (1) the health systems agency or agencies have neither approved nor disapproved the expenditure within the sixty days provided to them, or (2) the health systems agency or agencies have approved the expenditure, or (3) the health systems agency or agencies have disapproved the expenditure and the Secretary has decided, in accordance with section 1513(e)(2) of the PHS Act, that such expenditure may be made notwithstanding the disapproval of the health systems agency or agencies.

(c) Allowability of expenditures of funds granted pursuant to this subpart are determined in accordance with the applicable cost principles set forth in Subpart Q of 45 CFR Part 74.

(d) All expenditures of grant funds must be recorded in accounting records separate from records relating to the expenditure of all other funds. The accounting records must identify separately expenditures for each of the three categories set forth in paragraphs (a)

(1), (a)(2), and (a)(3) of this section. The records must be retained and made accessible in accordance with the requirements of Subpart D of 45 CFR Part 74.

(e) Each State shall file fiscal reports relating to the expenditure of the grant funds in accordance with the requirements of Subpart I of 45 CFR Part 74.

Subpart B—[Reserved]

[FR Doc.77-1236 Filed 1-13-77;8:45 am]

Public Health Service

[42 CFR Part 101]

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Interim Confidentiality and Disclosure of Data and Information; Extension of Time for Comment

In light of requests from interested parties, the period for comments to the notice published December 3, 1976 [41 FR 53215] proposing interim regulations pertaining to confidentiality and disclosure of data and information by Professional Standards Review Organizations is hereby extended. All interested parties are invited to submit written comments to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A-55, 5600 Fishers Lane, Rockville, Maryland 20857 by no later than February 16, 1977.

Dated: January 11, 1977.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

Marjorie Lynch,
Acting Secretary.

[FR Doc.77-1340 Filed 1-13-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 228]

[FRA Docket No. HS-2, Notice No. 3]

CONSTRUCTION OF RAILROAD EMPLOYEE SLEEPING QUARTERS

Extension of Time to Comment

On December 3, 1976, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a notice of proposed rulemaking on regulations concerning the location of railroad employee sleeping quarters in conformity with section 2(a)(4) of the Hours of Service Act (45 U.S.C. 62(a)(4)), as amended by section 4 of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94-348, 90 Stat. 818 (41 FR 53070). FRA administers and enforces the Hours of Service Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

Comments on the proposed rulemaking were requested to be submitted by January 17, 1977. The Association of American Railroads has petitioned on behalf of itself and its member railroads for an extension of time within which to comment on the rulemaking. In order to encourage the submission of valuable information and views, and in recognition of the fact that the present comment period included the holiday season, FRA hereby extends the time for comment on the proposed rules through Thursday, February 17, 1977. Administration of the law will not be materially affected by the extension, since interim rules are presently in effect which provide for FRA approval of sites for the construction or reconstruction of employee sleeping quarters which are determined not to be in the immediate vicinity of humping or switching operations (41 FR 53028; December 3, 1976).

Comments received by the close of business on February 17 will be considered in developing final rules. All submissions should be made in triplicate to the Docket Clerk, Office of Chief Counsel (RCC-1), Federal Railroad Administration, 400 7th Street SW., Washington, D.C. 20590.

Issued in Washington, D.C. on January 12, 1977.

R. LAWRENCE MCCAFFREY, Jr.,
Chief Counsel.

[FR Doc.77-1347 Filed 1-13-77;8:45 am]

[Docket No. LI-4, Notice 3]

[49 CFR Part 230]

LOCOMOTIVE INSPECTION

Wheel Slip/Slide Indicators

The Federal Railroad Administration (FRA) is considering amendment of its Locomotive Inspection regulations (49 CFR 230) to provide that whenever an engine is shut down or isolated thereby nullifying the operation of a locomotive wheel slip/slide indicator, the locomotive unit may not be moved beyond a facility where the necessary repairs may be made.

Section 230.201(d) of the Locomotive Inspection regulations (49 CFR 230.201(d)) provides that the enginemen's compartment of the controlling unit of a locomotive used in road service must be equipped with a device to warn of the presence of slipping or sliding driving wheels on any unit of the locomotive.

Section 230.262(a) of the Locomotive Inspection regulations (49 CFR 230.262(a)) permits a locomotive unit to remain in service when one or more of its internal combustion engines has been shut down because of defects if a distinctive tag giving the reason for the shutdown is placed near the engine starting control. This procedure is generally sufficient to assure that no damage or injury will result from an engine defect. However, if the engine that is shut down is the sole source of power for a wheel slip/slide device required by § 230.201(d), that device is thereby rendered inoperative and the protection that it is supposed to provide is nullified. Accordingly, FRA is proposing to amend § 230.262(a) to limit the operation of a locomotive in such circumstances to movement to a facility where the necessary repairs may be made. In addition, the substance of the "interpretation" paragraphs appended to paragraph (d) of § 230.201 is being incorporated into the text of that paragraph.

The proposed amendment would permit limited continued operation after a slip/slide indicator becomes inoperative. The permission differs from the requirements concerning other locomotive defects. Except under § 230.262(a), the Locomotive Inspection regulations do not provide for operation of a locomotive unit after a defect is discovered. However, since inoperability of a wheel slip/slide indicator is not itself a structural defect, FRA does not believe it is necessary to require immediate removal of the unit from service whenever an engine is shut down or isolated.

FRA has evaluated this proposed amendment in accordance with the policies of the Department of Transportation which were stated in a public notice published in the April 16, 1976, issue of the FEDERAL REGISTER (41 FR 16200). By limiting the operation of locomotive units having inoperative slip/slide devices, the proposed regulation would reduce substantially the risk of a derailment as a result of undetected slipping or sliding driving wheels. The proposed restriction would also result in some increase in railroad operating costs. While FRA does not know how frequently these devices are made inoperative, this should occur rarely on locomotives that have been inspected in accordance with the Locomotive Inspection regulations. Consequently, while FRA cannot quantify these increased costs, we believe that they will be insignificant compared to the safety benefits to be derived from the proposed regulation.

BACKGROUND

An advance notice of proposed rule making (ANPRM) on Locomotive Speed Indicators, Speed Recorders, and Wheel Slip/Slide Indicators was issued by FRA on February 4, 1974, and published in the FEDERAL REGISTER on February 8, 1974 (39 FR 4929). The ANPRM was designed to solicit comment on the regulation to be developed concerning the subject devices, and interested persons were invited to submit written data, views, and comments responsive to specific questions listed in the ANPRM.

On March 14, 1974, FRA issued a notice extending the period for filing of written comments to April 30, 1974 (39 FR 10267, March 19, 1974).

FRA is still considering the comments concerning locomotive speed indicators and recorders and may issue a notice of proposed rule making on these subjects at a future date. Seven of the comments are relevant to the proposed rule involving wheel slip/slide indicators. A summary of the relevant comments and FRA's responses is as follows:

ISSUES ADDRESSED IN COMMENTS

1. *Should FRA require slip/slide indicators in the operatnig compartments of rapid transit cars?* Two commenters contended that wheel slip/slide indicators should not be required in the operating compartments of rapid transit cars. They stated that except for some newer cars, rapid transit cars do not operate at high adhesion levels. Although these newer cars are not equipped with devices to warn the operator of slipping or sliding wheels, they are equipped with an apparatus that detects and corrects these conditions. They further contend that even if a wheel does lock on a rapid caen if a wheel does lock on a rapid transit car, it normally would be discovered and remedied promptly because of the short length of transit systems and distances between stations. Both commenters state that experience shows that slipping or sliding wheels are not a problem on rapid transit cars.

FRA agrees that the characteristics of rapid transit operations facilitate prompt detection of slipping and sliding wheels. Moreover, FRA data does not show a significant safety problem due to undetected slipping and sliding wheels on rapid transit cars. Accordingly, we do not propose to require warning devices in the operating compartments of rapid transit cars at this time.

2. *Should FRA require slip/slide indicators for idler wheels?* Several comments submitted in response to the ANPRM stated that slip/slide indicators for idler wheels are not necessary. They stated that there are very few locomotives still in existence with idler axle trucks, and that the operating history of those locomotives shows that the idler wheels are not a safety problem. Also, a manufacturer advised that powered axles are more prone to failures that can provoke wheel sliding than are nonpowered axles. After considering this matter in the light of the comments, FRA has concluded that slip/slide indicators for idler wheels should not be required.

3. *Should FRA require wheel slip/slide indicators that function under all operating conditions?* All four commenters that addressed this issue stated that reliable, reasonably priced slip/slide indicators that function when an engine is shut down are not available. Some of the commenters stated that all of the road service locomotives presently in service have slip/slide indicators that function only as long as the traction motor is powered. The shortest time forecasted before a device could be developed, tested, and placed in production was between 18 months and two years. Cost estimates ranged from $1,500 to provide a device to $8,000 including installation. One commenter supported a requirement for devices that would function under all operating conditions, stating that even without power being transferred to an axle, the pinion gear at the end of the traction motor armature shaft could lock and in turn lock its wheel. Another commenter opposed such a requirement, stating that it could not be predicted whether any particular system will prove to be reliable and reasonable in cost to install on new or existing locomotives. That commenter objected to predicating a regulatory deadline on "a 'sales promise' lead time projection."

FRA agrees that reliable slip/slide indicators that function under all operating conditions are not available. In addition, FRA believes that the proposed limitation on the operation of locomotives while these devices are inoperative will be sufficient to assure safety. Consequently, we are not proposing a regulation to require that locomotives be equipped with wheel slip/slide indication devices that function under all operating conditions. Nevertheless, FRA will continue to monitor railroad operations and technological developments and may propose additional requirements in the future.

4. *Should the locomotives of museum and recreational railroads be required to be equipped with wheel slip/slide indicators?* One commenter recommended that locomotives of railroad museums and recreational railroads not be required to be equipped with wheel slip/slide indicators. FRA agrees. Most of these locomotives are steam locomotives and, therefore, are not required to be so equipped. The other types of museum and recreational locomotives are required to be so equipped only if they operate over the line of a railroad subject to the Locomotive Inspection Act (Sec 45 U.S.C. 22).

COMMENT PROCEDURE

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. FRA specifically requests information, quantified to the extent practicable, concerning the costs, benefits, and other impacts that would result if the amendment proposed in this notice were to be adopted. Communications should identify the regulatory docket number [Docket No. LI-4], and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before March 1, 1977, will be considered before final action is taken on the proposed amendment. Comments received after that date will be considered only so far as practicable. All comments received will be available for examination by interested persons at any time during regular working hours in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The proposal contained in this notice may be changed in light of the comments received.

(Locomotive Inspection Act (secs. 2, 5, 36 Stat. 913, 914, 45 U.S.C. 23, 28, as amended, sec. 6 (e) and (f), 80 Stat. 939, 940, 49 U.S.C. 1655); 49 CFR 1.49(c) (5).)

Issued in Washington, D.C. on January 7, 1977.

ASAPH H. HALL,
Administrator.

1. It is proposed to delete the *Interpretation* paragraphs that accompany paragraph (d) of 49 CFR 230.201 and to amend the text of the paragraph to read as follows:

§ 230.201 Locomotive unit.

* * * * *

(d) *Slipping or sliding wheel alarms.* The enginemen's compartment in the controlling unit of each locomotive used in road service must be equipped with a device to warn the locomotive crew, by visual indication or audible alarm, of the presence of slipping or sliding driving wheels on any unit in the locomotive consist. The indication or alarm need not distinguish between slipping or sliding driving wheels.

2. It is proposed to amend 49 CFR section 230.262(a) to read as follows:

§ 230.262 Engines and accessories.

(a) *Tagging for repairs.* Internal combustion engines shall be maintained in a safe and suitable condition for service. Whenever any internal combustion engine has been shut down because of defects and the unit is continued in service a distinctive tag giving reason for the shut-down shall be conspicuously attached near the engine starting control and shall remain attached until repairs have been made. When an engine is shut down or isolated thereby nullifying the operation of a wheel slip/slide device required by section 201(d) of this part, the unit may not be moved beyond a facility where the necessary repairs may be made.

* * * * *

[FR Doc.77-1246 Filed 1-3-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 310b]

[Docket 30338, PDR-44, dated January 12, 1977]

PUBLIC ACCESS TO BOARD MEETINGS

Notice of Proposed Rulemaking

Notice is hereby given that, for purposes of implementing the open meeting provisions of the Government in the Sunshine Act, the Civil Aeronautics Board has under consideration the adoption of a proposed New Part 310b of its Procedural Regulations. (14 CFR Part 310b.)

The principal features of the proposal are described in the Explanatory Statement and the proposed new part is set forth in the proposed rule. The rule is proposed under the authority of section 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; and 5 U.S.C. 552b(g), 90 Stat. 1244.

Interested persons are requested to participate in the proposed rulemaking through the submission of twenty (20) copies of written data, views, or arguments pertaining thereto, addressed to the Docket 30338, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Persons may also participate in this proceeding through submission of comments in letter form to the Docket Section at the address indicated above, without the necessity of filing additional copies thereof. All relevant material re-

ceived on or before February 14, 1977, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 711 Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 upon receipt thereof.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

The Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241, amends Title 5 of the United States Code by adding a new section, 5 U.S.C. 552b, "Open meetings" regarding meetings of collegial bodies, such as the Civil Aeronautics Board. 5 U.S.C. 552b(g) requires each agency subject to the open meeting provisions to promulgate regulations, after public comment, implementing these provisions.

The Board's proposed New Part 310b is set forth below.[1] The proposed rules state the Board's initial policy under the Sunshine Act: that all of its meetings will be open to public observation unless (1) the Board determines that a matter to be discussed at a meeting is likely to fall within one or more of the exemptions set out at 5 U.S.C. 552b(c) and proposed § 310b.5; and (2) the Board additionally determines that there are sufficient reasons to close the meeting. There will be a presumption of openness. Decisions to close will be made on an ad hoc, item-by-item basis. The Board does not now contemplate any wholesale closings of meetings by generic categories.

The proposed regulations describe the meeting announcements that will be issued for every meeting, set forth the procedures by which the Board may decide to close discussion of a matter or withhold information about a matter to be discussed at a meeting; and specify the requirement that the General Counsel certify that a meeting may be closed to public observation.

Proposed § 310b.8 sets out procedures for requests to open or close Board meetings. Although the statute does not so require, we have tentatively decided to provide a mechanism for requests to open meetings which the Board has earlier determined to close. We are of the tentative view that such a procedure will provide an opportunity to consider views regarding open meetings which may not have to our attention, and be a useful vehicle for monitoring public reaction. The Board cannot, of course, expend its limited resources on pro forma requests to open every closed proceeding. The provision is thus being proopsed with the expectation that requests to open a meeting will not be made frivolously. We are proposing permitting requests by any person to open a meeting; but, in the interest of openness in government, we propose to limit requests to close to the statutory category of requests pursuant to 5 U.S.C. 552b(c) (5), (6), or (7) by "persons whose interests may be directly affected".

Proposed § 310b.9 deals with the conduct of open Board meetings and states the authority and responsibility of the presiding Member to insure that the meetings are conducted in an orderly fashion so as to preserve the public's right to observe and the Board's right to conduct its business. This section states that the open meeting provisions do not include a right to participate or to supplement the record in matters before the Board. Also stated is the fact that comments made at Board meetings do not themselves constitute Board action and persons acting on the basis of observing open meetings do so entirely at their own risk.

The proposed rules specify the making and maintenance of verbatim transcripts for closed discussions and the availability to the public of non-exempt portions of them. Although not required to do so by statute, we have tentatively decided to establish an intra-agency mechanism for requests for additional portions of transcripts not already publicly available. As with requests to open meetings earlier determined by the Board to be closed, we would expect that transcript requests would be more than mere pro forma exercises.

In addition to comments on the provisions and procedures of the proposed rules themselves, we also invite comments on the following:

1. As set out in the proposed rules, it is the Board's policy to open meetings to public observation unless the matter to be discussed is likely to fall within one or more exemptions and the Board determines that the meeting be closed.

We are concerned, however, that there may be a possible conflict between a Board determination to open the discussion of a section 801 case and the Presidents' right to classify in whole or in part the Board's decision of the case pursuant to Executive Order 11920. Discussion at an open meeting could touch upon the same matters later classified by the President. In theory, therefore, it is possible that an open Board meeting could reveal matters which the President would later desire to classify. The Board will welcome any comments or proposed solutions from members of the public on this issue.

2. The Board also invites public comment on the question of the perceived advantages and disadvantages of open meetings discussing enforcement matters. Although many such discussions will be exempt from the Sunshine Act's open meetings requirement, the Board recognizes that the exemptions are not mandatory and will welcome the views of the industry and other members of the general public on questions such as: the damage which might flow from open discussions of persons who might later be found to be innocent of any wrongdoing; the benefit to the public of knowledge derived from discussion of particular suspect or illegal practices; the effect of open meetings on on-going enforcement matters; or other aspects of the decision to open or close discussions of this type.

3. Finally, the Board is deeply concerned with the potential effects of open meetings upon persons' investment decisions. The proposed rule states that persons acting on the basis of observances of open Board meetings do so at their own risk. Nonetheless, it seems clear that this obvious fact alone may not deter investment speculation on the basis of what was heard at an open meeting. These considerations are especially applicable to route awards, which may be of great value to the prevailing carrier. In such cases, it is possible that open discussion might be construed as tentatively favoring a particular carrier, while the final decision does not support that particular carrier. Innocent persons, speculating as a result of the tentative discussion, could be injured. For these reasons, the Board is interested in receiving public comment on the likelihood that open meetings will encourage harmful financial speculation, and on any steps the Board might take to reduce this possibility.

Accordingly, it is proposed to add a new Part 310b to the Board's Procedural Rules (14 CFR Proposed Part 310b) as follows:

PART 310b—PUBLIC ACCESS TO BOARD MEETINGS

Sec.

AUTHORITY: Sec. 204(a), Federal Aviation Act of 1958, as amended 72 Stat. 743, 49 U.S.C. 1324, and 5 U.S.C. 552(g), 90 Stat. 1244.

§ 310b.1 Purpose and scope.

(a) The purpose of this regulation is to implement the open meeting provisions of the Government in Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 et seq., codified at 5 U.S.C. 552b. 5 U.S.C. 552b(g) requires the publication of these regulations implementing the requirements of 5 U.S.C. 552b (b) through (f).

(b) This regulation covers all meetings, as defined in § 310b.2, of a majority of the membership of the Board. The Civil Aeronautics Board has no subdivisions authorized to act on behalf of the agency within the meaning of 5 U.S.C. 552b(a)(1).

§ 310b.2 Definitions.

"Board" means the Civil Aeronautics Board.

"Meeting" means the deliberations of at least the majority of the membership

[1] Pursuant to 5 U.S.C. 552b(g), the Board's staff has consulted with the Office of the Chairman of the Administrative Conference of the United States during the preparation of this Notice and a copy has been transmitted to that Office for comment.

where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations regarding a decision to open or close a meeting, to withhold information about a meeting, or regarding meeting agendas (e.g. time, place, subject).

"Member" means a Member of the Civil Aeronautics Board appointed by the President with the advice and consent of the Senate.

§ 310b.3 Open meetings.

It is the policy of the Board that its meetings are open to public observation unless the Board determines that: (1) a matter to be discussed at a meeting is likely to fall within one or more of the ten exemptions set out in § 310b.5; and (2) that there are sufficient reasons to close the discussion of the matter.

§ 310b.4 Meeting announcements.

(a) For all Board meetings, a meeting announcement shall be issued setting forth: (1) the time, place, matters to be discussed; (2) whether the discussion of each matter is to be open or closed to public observation; and (3) the name and phone number of the Board official who will respond to requests for information about the meeting.

(b) If the meeting is closed to public observation in whole or in part, the meeting announcement shall also include a copy of the Certification of the General Counsel, as set forth in § 310b.7. In addition, it shall include the recorded votes of the Members on the question of closing the meeting, and the explanation of the closing along with a list of persons expected to attend unless such information has already been made public pursuant to § 310b.6.

(c) If information about a closed meeting is itself within one or more of the exemptions set out at § 310b.5 and the Board determines to withhold such information from a meeting announcement, such announcement shall contain the recorded votes of the Members on the question of withholding information unless such vote has already been made public pursuant to § 310b.6.

(d) Each meeting announcement shall be issued at least seven calendar days before the meeting unless a majority of the membership determines by recorded vote that agency business requires a meeting on less than seven days notice. If the Board has so voted, the meeting announcement shall issue at the earliest practicable time and shall include in addition to any information required by paragraphs (a), (b), and (c), of this section the recorded vote of the Members that agency business has required the shorter notice period.

(e) Each Meeting Announcement shall be: (1) posted on the Board's Public Notice Board in Room 714, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; (2) available in the Board's Office of Public Affairs; and (3) transmitted to the FEDERAL REGISTER for publication.

(f)(1) An amended Meeting Announcement shall be issued for any change in a meeting announcement.

(2) Changes in the time or place of a meeting do not require a recorded vote of the Members and may be made by issuing an amended Meeting Announcement.

(3) Changes in a prior meeting announcement regarding the subject matter, whether the meeting is open or closed in whole or in part to public observation, and decisions to withhold information about the meeting require the recorded vote of the majority of the membership as set forth in § 301b.6. Amended meeting announcements regarding these changes shall contain a copy of the recorded vote of the Members on the change unless such vote has already been made public pursuant to § 310b.6. If there has been a change from a decision to open the meeting to public observation, the explanation required by § 301b.6(e) shall also be included in the amended Meeting Announcement unless it has already been made public pursuant to § 310b.6.

(4) Amended meeting announcements shall be issued at the earliest practicable time and shall be made public in the same maner as the original meeting announcement as set forth in paragraph (e) of this section.

§ 310b.5 Matters which may be closed to the public.

(a) Pursuant to the procedures set forth in § 310b.6, the Board may determine that discussion of a matter may be closed to public observation or that information about a matter to be discussed at a meting may be withheld from public discolsure if such observation or disclosure is likely to:

(1) Disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

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

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

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

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

(9) Disclose information the premature disclosure of which would:

(i) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

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

(10) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 310b.6 Procedures for closing discussion or withholding information.

(a) Discussions of a matter shall not be closed to the public and information about a meeting shall not be withheld from the public meeting announcement except by a recorded vote of a majority of the Membership with respect to each such matter or item of information. For this purpose, such votes shall be by the Members themselves without use of proxies.

(b) Each matter the discussion of which is to be closed to public observation and each piece of information that is to be withheld from the public meeting announcement shall be the subject of a separate vote unless, the matter or information is expected to involve a series of meetings. In such case, the Board may vote to close the discussion or withhold the information about the same particular matter for a period of thirty days from the date of the initial discussion in the series.

(c) By the close of business on the working day following a vote to close or withhold, the Secretary of the Board shall have posted on the Board's Public Notice Board in Room 714, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 a copy of such vote, showing the vote of each Member on the question; a full written explanation of any closing as set forth in paragraph (d) of this section; and a list of all persons and their affiliation expected to attend the meeting.

(d) For each matter the discussion of which is to be closed to public observation, a full written explanation shall be issued. Such explanation shall contain reference to the specific exemptions listed in § 310b.5 which the Board is invoking and shall set forth why the discussion is to be closed.

§ 310b.7 Certification by the General Counsel.

(a) For each matter the discussion of which the Board decides to close to the public, the General Counsel shall certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

(b) A copy of any such certification shall be included in the meeting announcement for the meeting in question and shall be part of the Board's records for that proceeding.

(c) In the event the General Counsel position is vacant or the incumbent is unavailable or disqualified, the power to make such certification shall be exercisable by the next-ranking attorney in the Office of General Counsel who is available and is not disqualified. For these purposes, such next-ranking attorney shall be deemed by the Board to be the Acting General Counsel.

(d) A copy of such certification shall be placed in the Board's official Minutes.

§ 310b.8 Requests to open or close Board meetings.

(a) Any person may request that the Board open to public observation discussion of a matter which it has earlier decided to close. Such requests shall be made pursuant to the procedures set forth in paragraph (c) of this section.

(b) Any person whose interests may be directly affected may request that a portion of a meeting be closed to the public for any of the reasons referred to in § 310.5 (5), (6), or (7). Such requests shall be made pursuant to the procedures set forth in paragraph (c) of this section.

(c) (1) All requests to open or close Board meetings shall be captioned "Request to Open: _____ (date) Board meeting on item _____ (number or description)" or "Request to Close: _____ (date) Board meeting on item _____ (number or description)", as the case may be, shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(2) The person making the request shall submit nine copies of the request to the Office of the Secretary. Such requests shall be submitted within 3 working days of the issuance of the meeting announcement regarding a meeting to be held within seven calendar days. In all other cases, requests must be submitted no less than eight working hours before the meeting in question. Untimely requests to open meetings shall be returned to the requester with a statement that the request was untimely received and that requests for access to transcripts pursuant to § 310b.11 can be made. Untimely requests to close meetings shall be placed on the agenda of the meeting in question as the first item of business and if a Member so requests, a vote on the request will be taken.

(3) Responsive pleadings to requests to open or close meetings shall not be accepted.

(4) The Secretary shall retain one copy of timely requests and forward one copy to each Member, one copy to the General Counsel, and two copies to the Docket Section, one for entry in the appropriate docket file, if any, and one to be posted on the Public Notice Board located in that section.

(5) Any Member may require that the Board vote upon the request to open or close. If the request is supported by the votes of a majority of the agency membership, an amended meeting announcement shall be issued and the Secretary shall immediately notify the requester and before the close of business the next working day, have posted such vote and any other material required by § 310b.4, § 310b.6, or § 310b.7 on the Board's Public Notice Board.

(6) If no Board Member requests that a vote be taken on a request to open or close a Board meeting, the Secretary shall by the close of the next working day after the meeting to which such request pertains certify that no vote was taken. The Secretary shall forward one copy of that certification to the requester and two copies of that certification to the Docket Section, one to be placed in the appropriate Docket file, if any, and one to be posted on the Public Notice Board, where it will be displayed for one week.

§ 310b.9 Conduct of open Board meetings.

(a) The presiding Member at each Board meeting has the authority and the responsibility to insure that the meetings are conducted in an orderly fashion so as to preserve the public's right to observe and the Board's right to conduct its business.

(b) The right of the public to observe open discussions at Board meetings shall not include a right to participate at the meeting, or the right to file motions, pleadings, or other documents based on the comments of Board Members or staff at open discussions. The open meeting procedure is not an appropriate vehicle for persons to supplement records in matters before the Board. Such motions, pleadings or documents shall not be accepted by the Board.

(c) Deliberations, discussions, comments, or observations made during the course of open discussions at Board meetings do not themselves constitute action of the Board. In addition, comments made by a Member may be advanced for purposes of discussion and argument and may not reflect the ultimate position of that Member. For this reason, persons who choose to act on the basis of the content of discussions at open Board meetings do so entirely at their own risk.

§ 310b.10 Transcripts of discussions at closed Board meetings.

(a) All Board meetings closed to public observation in whole or in part shall be the subject of a complete verbatim transcript indicating the identity of each speaker. Such transcripts shall be retained in the custody of the Board's Secretary for two years after the meeting or one year after the conclusion of the Board proceeding with respect to which the discussion was held, whichever occurs later. Along with the transcript, the Secretary shall also maintain a copy of the General Counsel certification (as set forth in § 310b.7) and a statement of the presiding Member setting forth the time and place of the meeting at which the discussion occurred and a list of persons present.

(b) The Board shall make available to the public in the Public Reference Room, Room 710, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, such portions of each transcript which are not exempt from disclosure pursuant to § 310b.5. Such nonexempt portions of transcripts will ordinarily be available within 20 business days of the meeting.

(c) Copies of the publicly available nonexempt portions of transcripts, for 15 cents per page, can be made at the Public Reference Room or ordered from the Public Reference Room.

(d) (1) Any person seeking access to portions of transcripts of discussions at closed Board meetings in addition to any portions already available may request such access from the Office of the Secretary at 1825 Connecticut Avenue, NW., Washington, D.C. 20428, within 7 business days of the availability of the transcript of the meeting in question.

(2) Such request shall be in writing, and shall be captioned "Sunshine Transcript Request" on the document and on the envelope if one is used. Such request shall indicate the name and address of the requester and shall state the date of the meeting, the matter for which additional access to transcripts is sought, the date of the public availability of the transcript in question, and the reasons for the request.

(3) Within 7 business days of receipt of the request, the Secretary shall either make the requested material available in whole or in part or provide an explanation for not doing so.

§ 310b.11 Requests for documents other than transcripts.

Requests for all Board documents other than the requests for the transcripts de-

scribed in § 310b.10 are governed by Part 310 of this title.

[FR Doc.77-1442 Filed 1-13-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 370]

[SPDR-58; Docket No. 30314, Dated: January 7, 1977]

EMPLOYEE RESPONSIBILITIES AND CONDUCT

Proposed Rulemaking

For the reasons set forth in the attached Explanatory Statement the Board has determined to issue a notice of proposed rulemaking to amend Part 370 of its Special Regulations (14 CFR Part 370), Employee Responsibilities and Conduct.

The principal features of the proposal are described in the Explanatory Statement and the proposed amendments are set forth in the proposed rule. The amendments are proposed under E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 et seq.; secs. 201, 202, 204 of the Federal Aviation Act, 72 Stat. 741, 742, 743 (49 U.S.C. 1321, 1322, 1324).

Interested persons may participate in this proceeding by submission of twenty (20) copies of written data, views or arguments addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All such materials shall be filed on or before February 14, 1977. Copies of such communications will be available for examination by the public in the Docket Section of the Board, Room 711, University Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Individual members of the general public or Board employees who wish to participate informally in this proceeding may do so through submission of comments in letter form to the Docket Section at the above address, without the necessity of filing additional copies.

It should be noted that the Board is attaching the highest priority to its consideration of the proposed rules which are the subject of this proceeding because of the importance which we perceive in improving the standards governing the conduct of government employees in a regulatory agency. We therefore intend to move forward as expeditiously as possible in order to put into effect these rules, which are designed to improve employee conduct and minimize conflicts of interest. Therefore the Board does not contemplate the granting of any extensions of time for the filing of comments with respect to this matter. Indeed, it is our present intention to have in effect by March 1, 1977 the rules which will result from this proceeding.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

This proposed amendment to Part 370—Employee Conduct and Responsibilities would constitute a revision of the regulation. It restricts in a number of ways conduct of employees, including Board Members themselves, which might give rise to an inference that their actions were motivated by considerations other than those which should lawfully and ethically control their conduct and actions. Further, it incorporates, replaces, and revises in a more restrictive fashion Section 274 of the CAB Manual dealing with Pecuniary Interests in Civil Aeronautics Enterprises. This updates and places all of our regulations relating to employee holdings of financial interests in a single document which would be readily available to both employees and the public.

The provisions of our existing regulation call for high standards of conduct from employees and establish appropriate standards for limiting holdings of financial and other interests of employees which might give rise to conflicts of interest or the appearance of such conflicts. Nevertheless, almost ten years have elapsed since we have reviewed these regulations in their entirety, and the administration of the controls during this period has not been wholly satisfactory. Therefore, it is appropriate that we should now review these regulations, with particular emphasis on their efficient enforcement. As a result of our reexamination, we believe that it is reasonable to establish, and do establish, even higher standards and tighter administrative controls than were prevalent earlier to meet what we perceive to be the public expectations for the conduct of Government employees in a regulatory agency.

The total effect and intention of our actions is to establish new higher ethical standards for the conduct of Board employees, including Members.[1] We seek further to establish an administrative mechanism that will insure that the substantive rules provided are adhered to scrupulously.

The changes made to improve employee conduct and minimize conflicts of interest are both procedural and substantive. As a matter of procedure, we have established a new administrative mechanism for handling the problems growing out of the application of Part 370. We have provided for the appointment of the General Counsel as the Board's Ethics Counselor and for the appointment of two Deputy Ethics Counselors (the Deputy General Counsel and the Director, Bureau of Enforcement), and delegated to the Ethics Counselor authority to appoint a Conflicts Administrator from the ranks of Board employees with the approval of the Managing Director.[2] The Ethics Counselor (or his Deputies at his discretion, or in his absence or unavailability) will be the arbiter of ethical questions arising under Part 370, including the rendering of final administrative determinations on whether an entity is a "civil aeronautics enterprise" under the definition provided in Part 370. However, neither the Ethics Counselor nor one of his deputies shall decide issues affecting an employee in the same organizational unit. The Conflicts Administrator will be responsible for the initial review of all financial reports filed under Part 370, except those of Board Members, which will be reviewed by the U.S. Civil Service Commission. Where a report indicates a violation of the regulation and the need for remedial action, as evidenced by prior rulings of the Ethics Counselor or the Board, the Conflicts Administrator may order such action. Otherwise, he shall pass the matter to the Ethics Counselor. The employee involved may always appeal the matter to the Ethics Counselor. The other principal duties of the Conflicts Administrator are to see that required actions are taken within the time limits prescribed by the regulations and, together with the Ethics Counselor and his Deputies, to render advice to employees and make available to them the texts of statutes and governing precedents applicable to employees of the Board.

In the case of Board Members, it is necessary to have independent review—not by one's own colleagues—of a Member's financial holdings. Therefore, reports of holdings of "civil aeronatics enterprises" and of other financial interests will be filed directly and solely with the Civil Service Commission, all in accordance with the provisions of Executive Order 11222. The Board regards the Civil Service Commission as having plenary authority to decide all questions concerning the financial interests of Members as may arise under these regulations. To this end, it will make available for such consultation as the Civil Service Commission desires, the services of its Office of General Counsel.

Under the scheme of Part 370, the Board is empowered to make the final decision in every case except those involving Board Members. In cases where a waiver is sought from a prohibition in the regulation, or a determination that an employee holds a financial interest in a civil aeronautics enterprise and must dispose of it, the employee may seek a waiver from the Bureau or office head with the approval of the Ethics Counselor and, subsequently, if the employee is dissatisfied with the result, petition the Board for a waiver from the requirements of the regulation or the determination of these officials under the standards provided in the regulation. If, on the

[1] New higher standards for the conduct of our proceedings have recently been established by the reissuance on an interim basis of Part 300—Rules of Conduct in Board Proceedings. (PR-154, 41 FR 34587, August 16, 1976, and PR-160, 41 FR 48116, November 2, 1976.)

[2] The Bureau of Operating Rights and the Bureau of Economics will supply operating, financial, and economic data and information with respect to air transportation and other companies and individuals as requested by the Ethics Counselor and the Conflicts Administrator for the purpose of carrying out their functions under this Part.

other hand, these officials disagree, the matter shall be submitted automatically to the Board. In one class of cases, however, those in which the Ethics Counselor determines that there is a real or apparent conflict of interest requiring specified remedial action, the employee may secure a review and determination by the Board by direct appeal rather than by seeking a waiver. In any case the employee has no election; he must follow the single course provided in the regulation for the type of case involved. In either case, the employee may be protected during the appeal or waiver process.

These procedural changes, with the time limits specified in the regulation for taking various actions, should speed up determinations under the regulation and increase accountability for action and for compliance by detailing the procedures to be followed with greater precision. The substantive changes discussed below, which add prohibitions on employee conduct, should have the same effect by eliminating many areas of indecision in the minds of employees and administrators as to the scope of the limitations of the regulation.

The substantive changes in the regulation (1) Expand the stated classes of persons covered by the regulation; (2) Restrict in a number of new ways the permissible conduct of persons covered; (3) Expand the definition of "civil aeronautics enterprise"; (4) Require additional reports of expanded scope with respect to "civil aeronautics enterprises"; (5) Expand the classes of employees required to file reports on their financial, employment, and other interests, increasing both the number of such reports and their scope; and (6) Certain miscellaneous changes. We shall discuss each of these categories briefly.

The stated classes of persons subject to the regulation are clarified to explicitly include "members of the personal staffs of the Board Members" and, for the first time, "consultants and experts hired by the Board by contract or otherwise" who are neither employees or special government employees. To the extent that these latter persons may not be "employees," it is apparent that such persons, like employees should be subject to high ethical standards and should avoid conflicts of interest or the appearance thereof. With respect to the consultants, the regulation also provides that each contract shall contain a provision subjecting the consultant or contractor to the regulation as a continuing matter through the life of the contract.

The permissible conduct of persons subject to the regulation has been limited in a number of significant ways by restricting the exceptions from the general rule that employees (including the employee's spouse, minor children, and other permanent members of the employee's immediate household) shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, meal, entertainment, loan, or any other thing of monetary value from a person (1) Who has or is seeking contractual or other business or financial relations with the Board, or (2) Who conducts operations or activities that are regulated by the Board, or (3) Who has interests that may be affected by the employees' performance of their duty, or, as added by this amendment, (4) Who has an interest in obtaining information from Board employees for use in producing a commercial publication, i.e. the media, or (5) Trade associations of one or more of such persons. (All of these classes may be referred to collectively as "interested persons.")

First, the exception permitting acceptance of something of value where the motive in giving was an obvious personal or family relationship has been restricted by requiring further that the employee reasonably believe that the cost of the thing of value was not borne by the employer of the person transmitting it and the circumstances do not create an actual or apparent conflict of interest.

Second, while benefits earned by prior employment and received as a matter of right may be received lawfully under the regulation, the exception is now restricted so that retirement benefits may only be received if they have been funded, and free or reduced rate transportation privileges may not be utilized by an employee (or by the spouse, children, or permanent members of the immediate household) while employed by the Board.

Third, the exception permitting employee participation in inaugural flights is restricted (1) By requiring a determination by the Board that employee participation is in the best interests of the Government, and (2) By the Board paying the host the pro rata cost of the employee's participation in the flight, including lodging, meals and entertainments incidental thereto. (Employees may also be accompanied by their spouses if they pay for their pro rata costs.)

Fourth, the exception permitting acceptance of invitations to social, honorary, or promotional functions, including luncheons, dinners, parties, or other affairs sponsored by interested persons is eliminated. However, an employee may attend such a function if the Board or the employee pays the host the cost of the employee's participation, or the host may pay the cost of the employee's participation if the employee is a speaker or program participant.

Fifth, the former broad exceptions permitting acceptance of invitations for food or refreshments in the course of meetings, inspection tours, or trips out of town or abroad, including lodgings in the latter instance, are now restricted to the acceptance of social amenities during the course of official travel (not involving an adjudicatory matter), including international civil aviation consultations or negotiations, only if invitations in these circumstances are extended by a civic body or a state, local, or foreign government, or international governmental organization, to all official delegations, or by a member of one delegation to one or more members of other delegations, and the Board employee is associated with the U.S. delegation, if the social engagement is customary under the circumstances and the refusal of the invitation would be embarrassing to the governments involved or otherwise would be inappropriate.

Sixth, also still permitted is acceptance from a foreign government of invitations to social engagements in conjunction with official business in the United States if the employee has no reason to believe that a civil aeronautics enterprise is bearing the cost of any social amenities involved, the occasion is customary under the circumstances, and the refusal of the invitation would be embarrassing to any of the governments involved or otherwise would be inappropriate. Seventh, the exception permitting other invitations if authorized in advance by the Board in particular situations is now further restricted by the necessity for a Board finding that acceptance of such an invitation "is in the best interests of the Government."

Other new provisions of the regulation limit employee conduct or impose new responsibilities upon the employee. Thus, gifts or gratuities, the receipt of which is prohibited by this regulation, must be returned by the employee with a letter of explanation. If that is not feasible they must be turned over to the Ethics Counselor, for distribution to a charitable organization. Likewise, a gift, decoration or other thing of value from a foreign government, otherwise than as permitted by statute and this regulation, must be turned over to the Ethics Counselor for transmittal to the State Department. Also, the regulation prohibits solicitation, negotiation, and arrangements for private employment by an employee personally and substantially participating, directly or indirectly, in a matter in which the prospective employer has an interest. However, the employee is encouraged to report the imminence of any such negotiations, unless he rejects them out of hand, and provision is made for relieving him from his representation of the Board in the matter if his supervisor and the Ethics Counselor so agree. To the same effect, an employee is prohibited from personally and substantially participating, directly or indirectly, in a matter that to his knowledge affects a party with whom he is dealing for future employment. Again, an employee is enjoined not to use his Government employment to influence or coerce a person to provide financial benefits to himself or another. And it is pointed out that influence or coercion will be readily inferred if the person being benefitted is one with whom the employer has family, business or financial ties.

One of the changes in the regulation is the inclusion of the definition of "civil aeronautics enterprise" and the administrative procedure for enforcing the prohibition against employee's holding financial interests in such entities. As noted earlier, we have eliminated § 274 of the CAB Manual, which formerly dealt with the material, so that all requirements relating to financial interests of employees are set forth in a single docu-

ment readily available to employees and the public. More importantly, we have broadened the scope of a "civil aeronautics enterprise" by a more realistic definition which includes entities which invariably give rise to a conflict or apparent conflict of interest where held by employees.

The effect of the changes in the definition of "civil aeronautics enterprise" is to bring within the ambit of the prohibition against employees holding financial interests in civil aeronautics enterprises the following types of organizations: (1) Intrastate air carriers; and (2) governmental authorities if engaged in a business enterprise, such as the operation of an airport.[5] These two categories clearly belong within the definition and our present action eliminates any doubt on that score. Since the present prohibition against holding financial interests in civil aeronautics enterprises is now broader than formerly unfairness to Board employees can arise. A Board employee who held a financial interest in a company formerly permitted but now prohibited would be penalized although not culpable. Any such unfairness may be relieved by a waiver. Such waivers shall be determined upon the basis of the hardship to the employee and the equities of the situation. It shall be clearly understood, however, that such waivers shall not be in perpetuity and that it shall be the invariable aim to terminate such waivers at the earliest possible time consistent with the foregoing standards.

Furthermore, we have provided both in the definition of civil aeronautics enterprise (§ 370.735–12(d)) and in the waiver provisions (§ 370.735–72(f)) pertinent considerations for determining what constitutes a primary engagement in civil aeronautics and for applying the provision prohibiting the holding of civil aeronautics enterprises and weighing the equity of relief therefrom in cases of employees other than Board Members, where it is legally permissible.

In particular, the appropriate authority is directed to consider (i) The sales, investment, profit, and managerial effort directed to the civil aeronautics aspects of the enterprise compared to the other aspects of its business, (ii) The public image of the enterprise, (iii) The degree of the Board's regulation and oversight of such enterprise, and (iv) The degree to which the economic interests of the enterprise might be affected by Board action.

The latter standard in particular will permit, but not require, the exclusion from the term "civil aeronautics enterprise" of some air carriers formerly included within the ambit of the definition. For example, in the past "air carriers" were included within the term "civil aeronautics enterprise" no matter how small the "air carrier" activities were in absolute terms or in relation to the total business of the enterprise. In such instances, where, for example, a billion dollar corporation owing a corporate aircraft registered it as an air taxi in order to charter it for use when not needed by the owner, thus reducing the net cost to the owner, we found it necessary to issue a waiver to permit the holding of the large corporation which was not in fact a civil aeronautics enterprise by any meaningful test. Our present intention is to identify and bar those enterprises where Board action might affect financial interests. The procedure adopted herein will, we believe, accomplish this objective more often and with greater precision while at the same time establishing a less burdensome administrative mechanism.

However, because of the foregoing, it is possible for an employee to retain a holding in an entity because it is not a civil aeronautics enterprise even though some part of the business it owns or controls consists of an air transportation company. We will now require that reports be made in such instances and that they be filed in the Public Reference Room in the alphabetical sequence of employees' names.

The regulation continues to provide exclusions from the definition of civil aeronautics enterprises. Thus, entities engaged in manufacturing products essentially non-aeronautical in nature are excluded even though some part of their production is used in aviation. The former exclusion for "investment trusts" whose portfolios include holdings in aeronautical enterprises has been continued but for "investment companies" (a broader term intended to cover mutual funds, bond funds, and the like) unless their names or portfolios suggest that they are engaged primarily in holding financial interest in civil aeronautics enterprises. The exclusion for aeronautical enterprises "exclusively" military in nature has been retained.

As in the past, the regulation requires all new employees, to file reports of their holdings of pecuniary interests in civil aeronautics enterprises upon entry upon duty. In view of the changes in the definition of civil aeronautics enterprises, all present employees would be required to refile within 30 days after the effective date of these amendments. Additionally, such reports must disclose holdings of financial interests in surface common carriers. Finally, all employees are required to file supplemental reports within 14 days of the acquisition by purchase, gift, inheritance or otherwise of any financial interest in any civil aeronautics enterprise or any entity which may arguably fall within that category.

As noted earlier, Board Members also file such reports. The only distinction drawn between them and other employees is that their reports are filed directly with and ruled on by the Civil Service Commission rather than the Ethics Counselor with an appeal to the Board, and that their waiver rights are limited by the statute.

A full report of all employment and financial interests has never been required of all employees. Rather, the reporting group was restricted to those employees in the upper echelons of the Board's staff who were closely related to the decision-making process.[6] It was felt that it was in these groups of employees that possible conflicts of interest might arise. We have by this amendment greatly expanded the groups of employees required to to make reports of employment and financial interests.[7] This expansion, notwithstanding the absence of any serious conflicts problems in the past, will, in our judgment, further our objective of being free from any real or apparent conflicts of interest.[8]

Moreover, we have increased the number and coverage of the reports required from this expanded group of employees. Such reports will now include financial interests in intrastate air carriers and in governmental authorities if they are engaged in a business enterprise such as the operation of an airport or other terminal or transportation facilities, or the like. Further, supplementary reports must be filed as of June 30 each year, and negative reports must be filed if no changes occur.[9] Also, between reports, any acquisition of a financial or other interest must be reported within 14 days of its occurrence. These requirements also apply to employees assigned or promoted to the expanded class. Thus, the

[5] While not classed as a "civil aeronautics enterprise," we are requiring all employees to report holdings of surface common carriers. Because of possible competitive problems such holdings may well give rise to conflict of interest problems and require some remedial action.

[6] They were (1) employees in Administrative Law Judge positions; (2) employees in grades GS–16 and above and in positions paid at a rate equal to or above the entrance rate for a grade GS–16; and (3) all other employees in positions of assistant division chiefs or equivalent and above at any grade. These categories were approved by the Civil Service Commission.

[7] They now include employees in grades GS–13 and above, all purchasing agents (including the librarian), and all Members' personal staffs. Some of these employees are below grade GS–13. Their inclusion is justified because, in the case of purchasing agents, their authority is not unlike that of higher rated employees and squarely presents realistic opportunities for conflicts of interest, and, in the case of Members' personal staffs, some of whom filed reports in the past, their explicit inclusion is based on the confidential relationship between themselves and the Member they work for.

[8] In his *Report to the Congress, Effectiveness of the Financial Disclosure System for Civil Aeronautics Board Employees Needs Improvement* (September 16, 1975), the Comptroller General indicated a need to expand the field of employees filing financial reports along the lines we have followed. Moreover, the classes of employees so included coincide more closely to the classes enumerated by the Civil Service Commission in the Federal Personnel Manual (5 CFR Part 735.403).

[9] So far as Board Members are concerned, similar statements or reports of financial or other interests are filed directly with the Civil Service Commission and reviewed by the Commission.

possible existence or continuance of real or apparent conflicts of interests has been greatly narrowed. Finally, annual authority to engage in outside employment is required, and if any significant change in such outside employment is made, a new application must be filed for permission to engage in such changed employment.

The miscellaneous changes in the regulation need little comment. We have made explicit what has always been implicit in the regulations, namely, that an employee's spouse is included within his "immediate family" (§§ 370.735–37, 370.735–72, and 370.735–73) by providing that for purposes of the prohibitions against employment and the holding of financial interests, an "employee" includes the employee's spouse, minor children, and permanent members of the employee's immediate household. We have also made clear that when traveling on official business no reimbursement may be accepted by an employee from private sources, excepting only reimbursement for normal travel and subsistence expenses in connection with meetings having training aspects approved in accordance with § 242.8 of the CAB Manual. On the other hand, an exception from the general prohibitions of the regulations is made to permit the acceptance from private sources of reimbursement for normal travel and subsistence expenses when not on official business if properly approved and not prohibited by law. Finally, we have corrected the list of statutes employees are to be acquainted with by striking one statute[1] and adding two new ones. (See § 370.730–44 (e) and (s).)

Since the amendments contained herein relate solely to matters of agency management, personnel and procedure, notice and public procedure thereon are not required. However, while the Board desires to secure the benefits of the higher ethical standards provided herein as promptly as reasonably feasible, we do not wish to exclude the public or our employees from making suggestions or proposals with respect to employee responsibilities and conduct. We have therefore determined to consider such comments and views as may be filed with respect to these proposed rules before we finally adopt these revised standards. It should also be noted that the proposal herein contemplates that the new rules would become effective on March 1, 1977.

These proposals have been approved by the United States Civil Service Commission.

PROPOSED RULE

The Board proposes to amend Part 370 of its Special Regulations (14 CFR Part 370), as follows:

1. Amend § 370.735–12 *Definitions*, by amending paragraph (a) to read in full as follows and by adding new paragraphs (d) and (e) as set forth below:

§ 370.735–10 Definitions.

* * * * *

(a) "Employee" means Board Members and employees, including special Government employees as defined in 18 U.S.C. 202[2] and members of the personal staffs of the the Board Members.

* * * * *

(d) "Civil aeronautics enterprise" means any enterprise primarily aeronautical in nature. In determining whether an enterprise is primarily civil aeronautical in nature, the Ethics Counselor or other authority shall consider, without excluding other relevant factors, (1) The sales, investment, profit, and managerial effort directed to the civil aeronautical aspects of the enterprise compared to the other aspects of its business, (2) The public image of the enterprise, (3) The degree of the Board's regulation and oversight of such enterprise, and (4) The degree to which the economic interests of the enterprise might be affected by Board action. Excluded from "civil aeronautics enterprises" shall be (1) Businesses engaged in manufacturing products essentially nonaeronautical in nature even though some part of their production is used in aviation; (2) Investment companies, unless their names or portfolios suggest that they are engaged primarily in holding financial interests in civil aeronautical enterprises; and (3) Aeronautical entities exclusively military in nature.

(e) "Financial interests" includes stocks, bonds, other forms of securities or indebtedness and other holdings or interests which produce (or may produce) a monetary or other material gain to their holder. A person shall be deemed to hold a financial interest if he owns it legally or beneficially or in a representative or fiduciary capacity.

2. Amend § 370.735–13 to read in full as follows:

§ 370.735–13 Policy and enforcement.

(a) The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence by citizens in their Government. In a regulatory agency such as the Civil Aeronautics Board, whose actions affect the safety and financial interest of a large number of persons (the users of air transportation as well as the suppliers of the service), it is particularly important that every employee be completely impartial, honest and above suspicion of improper conduct. Accordingly, the Board requires that its employees adhere strictly to the highest standard of ethical conduct in all their social, business, political and other off-the-job activities, relationships and interests as well as in their official actions. All Board employees shall exercise their informed judgment to avoid situations which result in actual or apparent misconduct or conflicts of interest.

(b) Failure to adhere to the requirements of the regulations in this part, including any failure to make a report or submit accurate and complete information required by this Part, or the disclosure of information in contravention of § 370.735–52, may constitute cause for disciplinary action. Non-compliance with a final decision of the Board, the Ethics Counselor, a Deputy Ethics Counselor, or the Conflicts Administrator may also constitute cause for disciplinary action. Such disciplinary action may in appropriate cases include removal. Any such administrative disciplinary action may be in addition to any penalty prescribed by law.

3. Amend § 370.735–14 to read in full as follows:

§ 370.735–14 Procedure for waiver or permission.

Unless a different procedure is specifically prescribed, requests for a waiver or special permission with respect to matters relating to this part shall be submitted as follows:

(a) Promptly upon the employee's discovery of a problem which in his judgment requires a waiver the employee shall forward to the head of the bureau or office a statement in triplicate setting forth, specifically and in detail, the facts and circumstances surrounding the matter and describing the relief requested. A copy of such statement shall also be sent to the Ethics Counselor.

(b) In determining whether the requested relief is permissible, the bureau or office head shall consider whether a denial of the requested relief would cause undue hardship to the employee and would not further the public interest. If the request concerns an employee's financial interests the bureau or office head shall also consider the factors set forth in § 370.735–72(f). The bureau or office head's decision, which shall normally be made within one week of receipt of the employee's request, shall be entered on each copy of the employee's statement. The bureau or office head shall retain the original copy of the statement, forward one copy to the Ethics Counselor for review, and return the remaining copy to the employee. If the Ethics Counselor, who normally will act within a week, disagrees with the determination of the bureau or office head, the bureau or office head and the employee shall be promptly notified and the matter shall automatically be submitted on the following day to the Board, which normally shall decide the matter within a week. In this situation, no decision will become effective except that

[1] Stricken is the prohibition against the employment of a member of a Communist organization (50 U.S.C. 784). This action rests on the Supreme Court's decision in *United States* v. *Rodell*, 389 U.S. 258 (1967).

[2] 18 U.S.C. 203 defines a "special Government employee" as including an officer or employee of any independent agency of the United States who is retained, designated, appointed, or employed to perform with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

of the Board. If, however, the Ethics Counselor agrees with the bureau or office head, the employee shall be so notified and the effectiveness of the decision shall be stayed for two working days after notification of the employee of the Ethics Counselor's agreement to permit the employee to request the bureau or office head or, if necessary, the Board, or any Member thereof, for a stay of the decision pending the determination of a timely appeal to the Board.

(c) An employee whose request for a waiver is denied may appeal to the Board by forwarding to it within one week after receipt of notification from the Ethics Counselor of agreement with the decision of the bureau or office head a statement setting forth why the employee believes the decision should be changed. Copies of such statement shall be given at the same time to the head of the employee's office or bureau and the Ethics Counselor. The Board shall normally decide the appeal within one week and if such decision is upheld by the Board on appeal, the employee shall terminate as soon as ordered any prohibited employment, activity or interest.

(d) (1) Whenever an employee terminates any employment, activity or interest engaged in or held on the basis of a waiver or modification, or upon termination after denial of a request to engage in such activity, he shall immediately so advise the head of the office or bureau by memorandum, with a copy to the Ethics Counselor.

(2) Whenever an employee makes any significant change in the nature or extent of the outside employment which the employee was granted permission to engage in, the employee shall promptly file a new application in accordance with this section.

(3) Any permission to engage in outside employment is automatically limited to a period of no longer than one year, and is conditioned upon the employee complying with paragraph (d) (2) of this section, and upon filing a new application at least 30 days prior to the expiration of the year if it is desired to continue the employment beyond one year.

(e) Insofar as the request for a waiver is filed by a Board Member and affects any matter other than the financial interests of the Board Member, the decision of the Ethics Counselor shall be reviewed by the full Board as a matter of course and shall not become effective until such Board ruling is made. Matters affecting the financial interests of a Board Member shall be handled by the Civil Service Commission.

4. Amend § 370.735–15 to read in full as follows:

§ 370.735–15 Interpretations, advice and dissemination of information.

(a) The Board hereby designates the General Counsel to serve as its Ethics Counselor and as the Board's designee to the Civil Service Commission on matters covered by this part. The Board also designates the Deputy General Counsel and the Director, Bureau of Enforcement as Deputy Ethics Counselors, either of whom may act as the Ethics Counselor when so designated by the Ethics Counselor or when the Ethics Counselor is absent or otherwise unavailable. Neither the Ethics Counselor nor either of his Deputies shall act as Ethics Counselor with respect to an issue involving an employee in the same bureau or office of the Board. The Ethics Counselor and his Deputies shall be assisted by a Conflicts Administrator appointed by the Ethics Counselor, with the approval of the Managing Director, from the employees of the Board.

(b) The Office of Personnel shall establish and maintain a roster of employees of the Board indicating which of them are required to file financial reports pursuant to § 370.735–74. It shall furnish the Conflicts Administrator with quarterly updates thereof.

(c) The Office of Personnel shall distribute a copy of this part, including the preamble to this Amendment No. ____, to each employee on the roster at the time of its issuance and to each new employee upon entrance on duty. It shall also distribute a copy of each substantive amendment of this part to each employee on the Board's roster within ten days after such amendment becomes effective. Whenever this section requires that a copy of this part or an amendment thereto be given an employee the Office of Personnel shall obtain from him a written acknowledgement of receipt of such copy and advise the Conflicts Administrator thereof. At the same time such Office shall advise each such employee of the persons who have been designated as Ethics Counselor, Deputy Ethics Counselors and Conflicts Administrator, that counseling services are available from them, including access to the statutory and other regulatory provisions cited in this part, and of the requirement that financial interests and employment are to be reported pursuant to §§ 370.735–72 and 370.735–73. Thereafter from time to time as may be appropriate, and at least annually, such Office shall again call the attention of each employee to the regulations in this part and again advise each employee of the information heretofore specified.

5. Add a new § 370.735–16 as follows:

§ 370.735–16 Consultants.

Those consultants and experts hired by the Board by contract or otherwise who are not considered employees or special Government employees shall be subject to all the regulations of this part (other than §§ 370.735–41 and 370.735–42) insofar as such regulations are applicable to special Government employees. Each contract with such a consultant or expert shall include a term subjecting such contractor to this section as a continuing matter through the life of the contract.

6. Amend § 370.735–21 to read as follows:

§ 370.735–21 Conduct prohibited.

(a) Except as provided in § 370.735–22, an employee, (and the employee's spouse, minor children, and other permanent members of the immediate household) shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, meal, refreshment, entertainment, loan or any other thing of monetary value, from a person (or employee or agent of such person) who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Board; or

(2) Conducts operations or activities that are regulated by the Board; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty; or

(4) Is a representative of a communications medium which has an interest in obtaining information from Board employees with respect to Board activities for commercial use; or

(5) Is an association or organization predominantly composed of persons who are subject to this section by their inclusion in paragraphs (a) (1), (2), (3), or (4) of this section.

(b) A gift or gratuity, the receipt of which is prohibited by § 370.735–21, shall be returned to the donor with a letter explaining why the return is necessary. When the return of the gift is not possible, the gift or gratuity shall be submitted to the Ethics Counselor with a written explanation why the return is not feasible. The Counselor shall turn the gift or gratuity over to a charitable organization.

7. Amend paragraphs (a), (c), and (d) of § 370.735–22 *Exceptions* to read as follows:

§ 370.735–22 Exceptions.

(a) The provisions of § 370.735–21 shall not apply:

(1) In respect to obvious family and personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors, if in addition, the employee reasonably believes that the cost of the gift, favor or other thing of monetary value will be borne personally by the relative or friend and the circumstances do not otherwise create a conflict of interest or apparent conflict or interest; or

(2) To retirement pay obtained by reason of prior employment where such benefits are a matter of right and are fully funded by the payor; provided, however, that free air transportation privileges earned by an employee for the employee, the employee's family, or permanent members of the employee's immediate household, even where such privileges may not be denied in the discretion of the carrier, may not be utilized by the employee, the employee's family, or permanent members of the employee's immediate household during the course of his employment by the Board.

* * * * *

8. Amend paragraph (b) of 370.735–22 *Exceptions*, by striking the words "(2) the carriage without charge by an air carrier, of employees engaged in inspec-

tion duties, pursuant to and in accordance with Part 22 of the Board's Economic Regulations (Part 224 of this chapter); and (3)" and substituting therefor "and (2)".

* * * * *

(c) The provisions of § 370.735–21 shall not prohibit the acceptance of the following:

(1) Invitations addressed to and approved by the Board for employees designated by the Board to participate in ceremonial or inaugural flights, and meals and entertainments incidental thereto, where the Board pays the host all costs associated with its employee's participation in such flight, including lodging, meals and entertainments, and where the Board also determines that such participation is in the best interests of the Government. In such instances, the spouse of the employee may also participate if the employee pays the pro rata cost of such participation.

(2) Invitations to widely-attended social, honorary or promotional functions, including luncheons, dinners, or other affairs, sponsored by persons specified in § 370.735–21, such as the annual Wright Day Dinner, luncheons of the Aero Club, National Aviation Club, International Aviation Club, or National Society of Industrial Associations, luncheons or dinners of the Air Force Association, Navy League, etc., Congressional Appreciation Dinners, and other honorary or promotional functions relating to aeronautics, sponsored by trade or aeronautical associations, but only where the Board or the employee pays the host the cost of the employee's participation in the affair. *Provided*, That for any such function the host may pay the cost of the employee's participation if the employee is a speaker, participates in the program for the function, or is seated at the head table as an honored guest. Employees shall consult the Ethics Counselor as to whether their role at a function constitutes participation therein.

(3) Invitations to social engagements with attendant social amenities during the course of official travel (not involving an adjudicatory matter), including international civil aviation consultations, only if invitations in these circumstances are extended by a civic body or a state, local or foreign government, or international governmental organization, to all official delegations, or by a member of one delegation to one or more members of other delegations, and the Board employee is associated with the U.S. delegation, if the social engagement is customary under the circumstances, and if the refusal of the invitation would be embarrassing to the governments involved or otherwise would be inappropriate.

(4) Invitations from a foreign government to social engagements in conjunction with official business in the United States if the employee has no reason to believe that a civil aeronautics enterprise is bearing the cost of any social amenities involved, the occasion is customary under the circumstances, and the refusal of the invitation would be embarrassing to any of the governments involved or otherwise would be inappropriate.

(5) Such other invitations as shall from time to time be authorized in advance by the Board in specific situations if the Board finds acceptance of such is in the best interests of the Government and makes such finding publicly available.

* * * * *

(d) the provisions of § 370.735–21 shall not prohibit the acceptance of (1) Unsolicited advertising or promotional material, such as pens, pencils, note pads, and calendars, and (2) Other items of nominal intrinsic value.

§ 370.735–24 [Amended]

11. Amend § 370.735–24 Gifts from foreign governments, by adding thereto the following sentence:

"* * * Any such gift or thing which cannot appropriately be refused shall be submitted to the Ethics Counselor for transmittal to the State Department."

§ 370.735–35 [Amended]

12. Amend § 370.735–35—Approval of outside employment, by adding the following material at the end thereof:

* * * Authority to engage in outside employment is automatically limited to a period of no longer than one year. If any significant change in the nature or period of outside employment is made a new application must be filed for permission to engage in such changed or extended employment.

13. Amend paragraphs (a) and (d) of § 370.735–36 Exceptions, to read as follows:

§ 370.735–36 Exceptions.

(a) Receipt of bona fide reimbursement, unless prohibited by these regulations or other law, for actual expenses for travel and such other necessary subsistence as is compatible with this part incurred when not engaged on official business if approved in accordance with § 370.735–34—370.735–36. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal benefits. When traveling on official business no reimbursement may be accepted from private sources, excepting only reimbursement for travel and subsistence expenses incurred in connection with meetings approved in accordance with § 242.8 of the CAB Manual.

* * * * *

(d) In respect to special Government employees, engaging in outside employment and receiving compensation therefor, to the extent reported and approved in accordance with §§ 370.735–73 and 370.735–74, and not otherwise prohibited by statute or regulation.

14. Amend paragraph (a) of § 370.735–37 to read as follows:

§ 370.735–37 Employment of family members in aeronautical and related enterprises.

(a) No individual will be employed or retained in employment by the Board if the spouse or a minor child or other permanent member of the employee's immediate household is employed by an air transportation company, a person or firm (legal, accounting, advertising, etc.) representing a civil aeronautics enterprise, or an aviation trade association.

15. Add a new section 370.735–38 reading in full as follows:

§ 370.735–38 Future employment.

(a) Solicitation, negotiation, or arrangements for private employment by an employee who is personally and substantially participating, directly or indirectly, in any particular matter in which the prospective employer has a financial interest are prohibited. Violations of this provision may also violate the criminal code (18 U.S.C. 208). Unless such solicitation, negotiation, or arrangements are rejected at the outset, employees are encouraged to report the facts promptly to the Ethics Counselor. With the authorization of his supervisor and the agreement of the Ethics Counselor, an employee may be relieved of any assignment which, in the absence of such relief, might preclude such solicitation, negotiation or arrangements.

(b) No employee shall undertake to personally and substantially participate, directly or indirectly, in any capacity in a matter that to his knowledge affects even indirectly any party with whom he is soliciting, negotiating, or has arrangements for future employment, except pursuant to the authorization of the Ethics Counselor.

§ 370.735–44 [Amended]

16. Amend § 370.735–44 Other statutory requirements, by striking the first two lines thereof and substituting therefor the following:

"Each employee shall acquaint himself with the following provisions of law. The full texts of these provisions are available through the offices of the Ethics Counselor, Deputy Ethics Counselors and Conflicts Administrator. * * *"

17. Revise paragraph (e) of § 370.735–44 Other statutory requirements, and add new paragraph (s) to § 370.735–44 as follows:

§ 370.735–44 Other statutory requirements.

* * * * *

(e) The prohibition against acceptance of excessive honorariums (2 U.S.C. 441(i)).

* * * * *

(s) The prohibition against a public official appointing or promoting a relative, or advocating such appointment or promotion (5 U.S.C. 3110).

18. Amend § 370.735–52 to read in full as follows:

§ 370.735–52 Misuse or disclosure of information.

No employee shall, for the purpose of furthering a private interest, except as provided in § 370.735–34, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made or would not be made available to the general public.

19. Add a new section § 370.735–56 to read in full as follows:

§ 370.735–56 Influence or coercion.

An employee shall not use his Government employment to coerce or influence, or give the appearance of coercing or influencing, a person to provide financial benefit to himself or another person. Coercion or influence will be readily inferred if the benefit is for one with whom the employee has family, business or financial ties.

[Subpart G (§§ 370.735–71—370.735) [Redesignated as Subpart F]

Subpart F (§§ 370.735–61—370.735–63) [Deleted]

Subpart G (§§ 370.735–370.735) [redesignated as Subpart F]

20. Delete Subpart F, including §§ 370.735–61, 370.735–62 and 370.735–63, and redesignate present Subpart G as "Subpart F—Financial Interests."

§ 370.735–71 [Amended]

21. Amend § 370.735–71 by deleting paragraph (a), redesignating (b) and (c) as (a) and (b), respectively, and, whereever it appears, changing "Part 274 of the CAB Manual" to "§ 370.735–72."

22. Add a new § 370.735–72 reading in full as follows:

§ 370.735–72 Civil aeronautics enterprises.

(a) No employee (including his spouse, minor children and other permanent members of his immediate household) shall have any financial interest in any civil aeronautics enterprise.

(b) The Office of Personnel shall obtain from each employee entering on duty (other than Board Members), a completed CAB Form 16, Employee's Report as to Financial Interests in Civil Aeronautics Enterprises, on which the employee shall report any financial interest held by him in a civil aeronautics enterprise or a surface common carrier. A Form 16 shall also be filed by every present employee of the Board (other than Board Members) within 30 days after the effectiveness of amendment No. ____. The Office of Personnel shall immediately send such Forms to the Conflicts Administrator. Board Members shall only file a Confidential Statement of Employment and Financial Interests required by E.O. 11222 directly with the Civil Service Commission, including all information relating to civil aeronautics enterprises.

(c) Any employee who by purchase, gift, inheritance or otherwise acquires a financial interest in a civil aeronautics enterprise shall within 14 days of such acquisition complete and forward to the Office of Personnel a Form 16 reporting such acquisition. The Office of Personnel shall immediately forward a copy of such Form 16 to the Conflicts Administrator.

(d) During each January the Office of Personnel shall remind employees by Staff Notice of their obligations to report holdings of financial interests in civil aeronautics enterprises. Periodically, the Conflicts Administrator shall distribute bulletins to employees listing those entities which have been determined to be or not to be civil aeronautics enterprises, with brief explanatory information as to the reasons therefor. Each such bulletin shall contain a warning that the listings may not be taken as conclusive as the nature of an enterprise may change with the passage of time.

(e) The Conflicts Administrator shall review all Form 16's and furnish advice respecting civil aeronautics enterprises to employees when requested or required. If, on the basis of past determinations of the Ethics Counselor or the Board, the entity being reviewed clearly appears to be or not to be a civil aeronautics enterprise, the Conflicts Administrator shall so advise the employee, the Office of Personnel and the Ethics Counselor. The Ethics Counselor may reopen a case if he disagrees with the Conflicts Administrator. If the Conflicts Administrator cannot reach a determination in a given case, or if the employee disagrees with the Conflicts Administrator, the matter shall be presented to the Ethics Counselor promptly. The Ethics Counselor shall determine whether the entity in question is a civil aeronautics enterprise and the nature and timing of reasonable remedial action. The Ethics Counselor's determination may not be appealed by the employee. If the employee does not wish to dispose of his financial interest in the civil aeronautics enterprise in accordance with the Ethics Counselor's decision he must within one week thereafter request a waiver from § 370.735–72(a) in accordance with the procedures set forth in §§ 370.735–14 and 370.735–72(f). The Conflicts Administrator and Ethics Counselor shall each normally make his decision on whether an entity is a civil aeronautics enterprise within one week of the presentation of the matter to him. The employee holding the financial interest shall furnish as much information as possible for use in determining the nature of the entity.

(f) An employee other than a Board member may, in accordance with § 370.735–14, request a waiver, modification or postponement of the implementation of this section, if this section would impose an undue hardship upon the employee and is not required in the public interest. In considering the employee's request for a waiver, modification or postponement, the following factors, among others, shall be considered: (1) The nature and extent of the employee's holdings, in terms both of the number of shares owned by the employee and the total shares outstanding, (2) The manner and date of acquisition of the financial interest, including the circumstance that the holding was lawful prior to March 1, 1977, (3) The nature of the employee's title to or obligations concerning the interest, (4) The nature and extent of the hardship to the employee if the waiver is denied, (5) The employee's function in the Board's decision-making process, (6) The extent and frequency of the disqualification of the employee from participation in the Board's work if the financial interest were retained, and (7) The reasons why the employee believes the retention of the financial interest will not tend to influence the performance of official duties, will not encourage premature or improper disclosure of information to any person, and will not otherwise create any form of conflict of interest or appearance thereof, and is not contrary to the public interest.

(g) Any employee required to dispose of a financial interest in a civil aeronautics enterprise shall do so within the time and in the manner allowed by the decision of the Ethics Counselor, unless such employee receives a stay or a waiver in accordance with the provisions of this section and § 370.735–14. The employee shall immediately advise the Conflicts Administrator upon disposition of the prohibited interest or other compliance with an order of the appropriate official and shall furnish the Conflicts Administrator any information earlier requested regarding the employee's progress in disposing of the interest.

(h) An employee holding a financial interest in an entity which is or may be a civil aeronautics enterprise shall withdraw from participation in any matter affecting such entity and shall notify the immediate supervisor of the holding of such a financial interest immediately upon the employee's acquisition of such an interest or the discovery that a previously acquired interest may violate this section.

(i) Appropriate actions for remedying the holding of a prohibited financial interest by a Board employee (other than a Member) which may be determined, in appropriate cases, by the Conflicts Administrator, the Ethics Counselor, or the Board, include: divestiture (with such conditions as may reasonably be appropriate); the establishment of a "blind trust" or other like independent investment arrangement; or any other arrangement approved by the Conflicts Administrator, Ethics Counselor or the Board as authorized to pass finally upon the case in question.

(j) In the event that an employee's holding of a financial interest in an entity is determined not to be a holding in a civil aeronautics enterprise, but the entity owns or controls an air carrier (whether domestic, foreign, or intrastate), the employee shall report the name of the entity and the name of the air carrier company so held, and the Conflicts Administrator shall file a report in the Conflicts File (alphabetical by name of employee) in the Public

Reference Room showing the name of the employee, the name of the entity and the name of the air carrier company.[38]

23. Redesignate § 370.735–72 as § 370.735–73 and revise paragraphs (a) and (b) to read in full as follows:

§ 370.735–73 Reporting financial interests and employment.

(a)(1) Employees presently in the categories listed in § 370.735–74(b), but excluding Board Members, shall submit to the Office of Personnel for transmittal to the Conflicts Administrator by _____, and all employees thereafter entering or being promoted to positions within the purview of § 370.735–74(b), shall so submit, within 30 days after any such event, a statement of their financial interests and employment on CAB Form 141. All special Government employees shall submit their statements of financial interests and employment in like manner in accordance with § 370.735–74(e). A supplementary statement shall be submitted as of June 30 of each year prior to July 31 by all those required to report initially. If no changes or additions occur, a negative report shall be submitted. Any acquisition of a financial or other interest during the year shall be reported in writing within 14 days.

(2) Board Members shall file their reports of Employment and Financial Interests in conformity with E.O. 11222 and the requirements of the Civil Service Commission.

(3) An employee's obligation does not end with the filing of a statement. Notwithstanding the filing of the reports required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of Title 18, United States Code.

(4) The interest of an employee's spouse, minor children and other permanent members of the employee's immediate household is considered to be the interest of the employee.

(b)(1) The Conflicts Administrator shall review the statements of financial interests and employment of all employees other than Board Members for the purpose of determining whether any conflict of interest or apparent conflict is present. If a conflict or apparent conflict is found, the Conflicts Administrator shall give the employee an opportunity to explain it. If the Conflicts Administrator thereafter finds, on the basis of past determinations of the Ethics Counselor or the Board, that there is a conflict or apparent conflict of interest, he shall so advise the employee, the Office of Personnel, the employee's bureau or office head, and the Ethics Counselor and shall also advise such persons of what remedial action must be taken. The medial action may include the employee's divestiture of the conflicting interest, disqualification for particular assignments, reassignment, disciplinary action, or the remedies specified in § 370.735–72(k). The Ethics Counselor may reopen the matter if he disagrees with the Conflicts Administrator.

(2) If the Conflicts Administrator cannot resolve the case, or if the employee disagrees with the Conflicts Administrator, the matter shall be presented to the Ethics Counselor within one week together with any additional written statement the employee may wish to make, and the Ethics Counselor shall decide the case.

(3) An employee may appeal the Ethics Counselor's decision to the Board by forwarding to it within one week of such decision a statement setting forth why the employee believes the Ethics Counselor's decision should be changed. A copy of such statement shall be given at the same time to the Ethics Counselor.

(4) The employee shall comply with the decision of the Conflicts Administrator or Ethics Counselor except only insofar as such decision is later changed by the Ethics Counselor or the Board, as the case may be. The effectiveness of the decision of the Conflicts Administrator or the Ethics Counselor shall be stayed for two working days after the employee receives notice thereof to permit the employee to request the Ethics Counselor or the Board, or any Member thereof, for a stay of the decision of the Conflicts Administrator or Ethics Counselor pending the determination of a timely filed appeal. The employee may not apply for a waiver from this section under § 370.735–14. Any remedial action shall be effected in accordance with applicable laws, executive orders and Civil Service Commission or Board regulations. The Conflicts Administrator, the Ethics Counselor and the Board shall normally decide each matter within one week, and the employee shall be responsible for promptly furnishing any information available to him requested by such officers.

(5) The Office of General Counsel of the Board shall be available for consultation with the Civil Service Commission in connection with any inquiry it may make about the holdings of any Member.

* * * * *

24. Redesignate § 370.735–73 as § 370.735–74 and amend it through paragraph (b) as follows:

§ 370.735–74 Employees required to submit statements.

(a) Every employee (other than Board Members), including special Government employees and consultants and experts working under contracts, shall execute and forward to the Office of Personnel for transmittal to the Conflicts Administrator a report of all financial interests in any civil aeronautics enterprise and any surface common carrier. Any subsequent acquisition of a financial interest in such an enterprise or carrier shall be promptly reported in accordance with § 370.735–72.

(b) The following categories of employees, including special Government employees and consultants and experts working under contracts, are determined by the Board, subject to the right of an employee to request a waiver under §§ 370.735–14, to be within the scope of §§ 735.403 and 735–404 of the Regulations of the Civil Service Commission on Employee Responsibilities and Conduct (5 CFR Part 735) and therefore shall, in addition to the requirement in paragraph (a) of this section, submit Statements of Employment and Financial Interests (Form 141):

(1) Employees in Administrative Law Judge positions.

(2) Employees in grades GS–13 and above.

(3) All other employees in positions of assistant division chief or equivalent and above at any grade or salary.

(4) All purchasing agents (including the librarian) and all Members' personal staffs.

* * * * *

25. Redesignate paragraph (e) of § 370.735–73 as paragraph (e) of § 370.735–74 *Employees required to submit statements*, and amend it to read as follows:

§ 370.735–74 Employees required to submit statements.

* * * * *

(e) In addition to all other reports, all special Government employees shall report all other employment. Such statements shall be submitted not later than the time of employment and shall be kept current throughout the special Government employee's employment with the Board by submission of a supplementary statement within 14 days after any change. These requirements may be waived or modified to the extent consistent with § 735.412 of the Civil Service Commission's regulations (5 CFR 735.412) if the employee requests a waiver in accordance with § 370.735–14.

[38] The use of such a file of reports listed in alphabetical sequence of employee names will require compliance with the Privacy Act. It will take about 90 days to secure such compliance. Until Compliance is completed, reports will not be made publicly available, but they will be accumulated during the interim period.

CAB Form 16
(Rev. 12-76) Civil Aeronautics Board

EMPLOYEE'S REPORT AS TO FINANCIAL INTERESTS IN CIVIL AERONAUTICS ENTERPRISES

Board policy prohibits employees, special government employees, consultants or experts working under contract (including their spouses, minor children or other dependents) from holding or voluntarily acquiring financial interests in civil aeronautics enterprises. The terms "civil aeronautics enterprise", and "financial interests" are defined in Part 370 of the Board's Special Regulations. Such a person knowingly making a false, fictitious or fraudulent statement in the report will be subject to criminal prosecution under Section 1001 of Title 18 of the United States Code and the making of any such statement, or failure to comply with other provisions of Part 370 is cause for disciplinary action, including, in appropriate cases, suspension of removal, and may result in other violations of the United States Criminal Code.

Check One or More:

( ) 1. I hold no financial interests in any civil aeronautics enterprise, as defined in §370.735-12 of the Board's Regulations.

( ) 2. I hold financial interests in civil aeronautics enterprises as described below. I understand that, except as may be authorized otherwise in response to a request submitted pursuant to §370.735-72, I am expected to dispose of these holdings within such reasonable time as directed by the Conflicts Administrator or the Ethics Counselor and to report in writing on the status of these holdings to one of them, until they are fully liquidated, and in the interim to disqualify myself from participation in any matter before the Board the outcome of which might affect such interests. My plans for disposing of these interests are set forth on the reverse side of this form.

( ) 3. I hold financial interests as described below which may or may not be included in the category of civil aeronautics enterprises. If a determination is made that any of my holdings are in civil aeronautical enterprises, I will, upon notification, dispose of such interests in accordance with the direction of the Conflicts Administrator or Ethics Counselor.

( ) 4. I hold financial interests as described below in a surface common carrier. I will disqualify myself from participation in any matter before the Board the outcome of which might affect such interest. If such disqualifications are likely to be numerous I will, upon notification, dispose of such interests in accordance with the direction of the Conflicts Administrator or Ethics Counselor.

NOTE: Indicate the number of the descriptive paragraph checked above applicable to each holding.

Company	Nature of Holding	Name of Person by Whom Held and Relationship	Date and Method of Acquisition

I hereby certify that I have read Part 370 of the Board's Special Regulations and this form; that I am familiar with their contents; and that the information I have inserted above and on the back of this sheet or required attachments is true, correct and complete to the best of my knowledge and belief.

Tel. No.

Date Ref. No. Signature

NOTE: Forward this report to the Office of Personnel, B-20, within three days of entry on duty. The information supplied on this form will be treated as confidential and made available only to those persons concerned with processing it.

CAB Form 1A1
(Rev. 12-76)

CIVIL AERONAUTICS BOARD

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING STATEMENT

The information to be furnished in this statement is required by Executive Order 11222 and the regulations of the Civil Service Commission and the Board issued thereunder. Except to those persons processing the statement, the information will not be disclosed outside the Commission or the Board may so determine for good cause shown.

The Order does not require the submission of any information relating to an employee's connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization which is not engaged in the ownership or conduct of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises" for purposes of this report and should be included.

The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

In the event any of the required information, including holdings placed in trust, is not known to you but is known to another person, you should request that other person to submit the information on your behalf and should report such request on Part IV of your statement.

No interest, if any, of a spouse, minor child, or other dependent shall be reported in this statement as your interest. If that information is to be supplied by others, it should be so indicated in Part IV.

1. NAME (Last, first, middle initial)	2. OCCUPATIONAL TITLE	3. GRADE
4. NUMBER OF DEPEND.	5. DIVISION	6. DEP. NO.

Part I. Employment and Financial Interests. List all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions; (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write NONE in the space provided. Please furnish this information in the following manner -- Enter name and business address, using one block, if necessary (starting the name of the stock exchange on which the shares are traded is not responsive to the question). Indicate the kind of business (manufacturing, financial, public utility, retail distributor, etc.)] and the principal products or services dealt in. Enter your position in the business (employee, officer, trustee, partner, etc.) and your financial interest in the business. Deposits in banks or shareholdings in building and loan associations or credit unions and holdings of government (federal, State, or local) bonds need not be shown unless the governmental unit is engaged in a business enterprise such as the operation of an airport, or other terminal or transportation facilities or the like. Other bonds, stocks and financial interests and all outside employment (including self-employment) must be shown.

NAME	ADDRESS	KIND OF BUSINESS	MAJOR PRODUCT OR SERVICE	POSITION OR BUSINESS AND NATURE OF FINANCIAL INTEREST

(If additional space is needed, use blank sheet headed as above)

Part II. Creditors. List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

NAME AND ADDRESS OF CREDITOR	CHARACTER OF INDEBTEDNESS, e. g., PERSONAL LOAN, NOTE, SECURITY

Part III. Interests in Real Property. List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write NONE.

NATURE OF INTEREST, e.g., OWNERSHIP, MORTGAGE, LIEN, INVESTMENT TRUST	TYPE OF PROPERTY, e.g., RESIDENCE, HOTEL, APARTMENT, FARM, UNDEVELOPED LAND	ADDRESS (IF RURAL, GIVE RFD, OR COUNTY AND STATE)

Part IV. Information Requested of Other Persons. If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write NONE.

NAME AND ADDRESS	DATE OF REQUEST	NATURE OF SUBJECT MATTER

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief. I further certify that I understand the provisions set forth in CAB Manual Sections 273 and 274 prohibiting holding pecuniary interests in civil aeronautics enterprises and restricting outside employment of myself and family members.

(Date) (Signature)

Please check over the form for completeness, accuracy, legibility and intelligibility. Be sure you have signed and dated the statement. Then enclose it in a 4" x 9½" envelope addressed to the Director of Personnel and marked "Personal". Seal the envelope and forward it to B-20, unless you're instructed otherwise.

[FR Doc.77-1166 Filed 1-13-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

ADVISORY COMMITTEE ON POULTRY HEALTH, MYCOPLASMOSIS SUBCOMMITTEE

Meeting

The first meeting of the Advisory Committee on Poultry Health was held at 9 a.m. on October 5, 1976, in the EPIC Room, Federal Building, 7th Floor, United States Department of Agriculture, Hyattsville, Md.

The functions of the committee include: advising the Secretary of Agriculture on outbreaks of avian diseases; studying and recommending extension of new and existing research; assisting in planning and disseminating information; recommending plans for eradication and control of avian diseases; and assisting in attaining the necessary cooperation from all segments of the poultry industry.

At this first meeting three subcommittees were appointed: Mycoplasmosis, Fowl Plague, and Area Quarantine.

The first meeting of the Mycoplasmosis Subcommittee will be held on January 25, 1977, from 9 a.m. to 4 p.m., in Room 643A, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland.

The purpose of this meeting is to examine problems encountered by the poultry industry because of mycoplasmosis infections, field programs, testing and diagnosis, and antigen production, and to make recommendations for possible resolution of these problems.

The meeting is open to the public. Written statements may be filed with the subcommittee before or after the meeting. Any member of the public who wishes to file a statement or who has further questions may contact Dr. F. J. Mulhern, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 316E, Washington, D.C. 20250, Area Code (202) 447-3668.

Dated: January 6, 1977.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

NOTE.—This document is reprinted without change from the issue of Monday, January 10, 1977.

[FR Doc.77-1021 Filed 1-10-77;8:45 am]

Forest Service

PROHIBITIONS

Delegation of Authority

Pursuant to 7 CFR 2.7, each Regional Forester is delegated the authority to issue regulations authorized by 36 CFR 261.70. This authority may not be redelegated.

JOHN L. MCGUIRE,
Chief, Forest Service.

JANUARY 10, 1977.

[FR Doc.77-1301 Filed 1-13-77;8:45 am]

U.S. BORAX MINING ACCESS ROAD FOR THE QUARTZ HILL PROSPECT

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the U.S. Borax Mining Access Road for the Quartz Hill Prospect, USDA-FS-DES(Adm)-77-04.

The U.S. Borax & Chemical Corporation, in behalf of Pacific Coast Mines, Inc., has proposed to develop a mining exploration road due east of Ketchikan on the mainland of southeast Alaska. This road is to be used for intensive development drilling of the prospect to depths below 600 feet and for the extraction of about 500 tons of ore for pilot testing (bulk sampling).

This draft environmental statement was transmitted to CEQ on January 6, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agricultural Building, Room 3231, 12th St. & Independence Ave. SW., Washington, D.C. 20250.

USDA, Forest Service, Alaska Region, Federal Office Building, Juneau, Alaska 99802.

Forest Supervisor, Chatham Area, Tongass National Forest, Federal Building, Sitka, Alaska 99835.

Forest Supervisor, Stikine Area, Tongass National Forest, Federal Building, Petersburg, Alaska 99833.

Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Room 313, Ketchikan, Alaska 99901.

A limited number of single copies are available upon request to Forest Supervisor, Ketchikan Area, Tongass National Forest, P.O. Box 2278, Ketchikan, Alaska 99901.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to J. S. Watson, Forest Supervisor, Ketchikan Area, Tongass National Forest, P.O. Box 2278, Ketchikan, Alaska 99901. Comments must be received by March 6, 1977 in order to be considered in the preparation of the final environmental statement.

CARL W. SWANSON,
Environmental Coordinator, Alaska Region.

JANUARY 6, 1977.

[FR Doc.77-1207 Filed 1-13-77;8:45 am]

Office of the Secretary

ADVISORY COMMITTEE ON POULTRY HEALTH FOWL PLAGUE SUBCOMMITTEE

Meeting

The first meeting of the Advisory Committee on Poultry Health was held at 9:00 a.m. on October 5, 1976, in the EPIC Room, Federal Building, 7th Floor, United States Department of Agriculture, Hyattsville, MD.

The functions of the committee include, advising the Secretary of Agriculture on outbreaks of avian diseases; studying and recommending extension of new and existing research; assisting in planning and disseminating information; recommending plans for eradication and control of avian diseases; and assisting in attaining the necessary cooperation from all segments of the poultry industry.

At this first meeting three subcommittees were appointed: Mycoplasmosis, Fowl Plague, and Area Quarantine.

The first meeting of the Fowl Plague Subcommittee will be held on February 2, 1977, from 8:00 a.m. to 4:30 p.m. in Room 101, Veterinary Science Building, 1655 Linden Drive, University of Wisconsin, Madison, Wisconsin.

The purpose of the meeting is to examine diseases caused by avian hemagglutinating viruses, such as fowl plague, and to advise the United States Department of Agriculture in the development of certain contingency plans to deal with disease outbreaks caused by these agents.

The meeting is open to the public. Written statements may be filed with the subcommittee before or after the meeting. Any member of the public who wishes to file a statement or who has further questions may contact Dr. F. J. Mulhern, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room

316E, Washington, D.C. 20250, Area Code (202) 447-3668.

Dated: January 6, 1977.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.77-1128 Filed 1-13-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-1-48; Docket 29123; Agreement C.A.B. 26174; R-1 and R-2]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 10th day of January, 1977.

In the matter of Agreement adopted by the Joint Traffic Conferences of the International Air Transport Association relating to passenger fare matters.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted at the Composite Passenger Conference in Miami held during September 1976, would increase fares to and from Italy by $2 and $4 for one-way and round-trip normal service and by $3 for specified round-trip promotional service to reflect a recent policy of the Italian Government of collecting embarkation fees at the time of ticket issuance.

Trans World Airlines, Inc. (TWA) and Pan American World Airways, Inc. (Pan American) have each submitted a statement in support of the agreement. Both report that as of August 29, 1976, the Italian Government decreed that an embarkation fee of 2,000 lira (about $2.33) be collected by the carriers at the time of ticket issuance, thus shifting the burden of collection of the tax to the carriers. The carriers argue that the proposed increases provide a simple and administratively feasible means of generating enough additional revenue to offset the amount that must be paid by the carriers to the Italian Government. While offering no estimate of the additional revenue accruing from the proposed charge, TWA estimates that it will pay the Italian Government over $600,000 in embarkation taxes during 1977. TWA also cites as precedent approval by the Board (Order 71-3-87) of surcharges of $1 and $2 on one-way and round-trips fares to reflect a tax previously collected by other European governments but shifted to the carriers.

Pan American indicates that, based upon the number of passengers enplaned during the year ended September 1976, it would have been liable for $195,000 in taxes and would have collected about $200,000 in gross surcharge revenues. The carrier, however, contends that the gross revenues would be considerably reduced through commission expense and absorption due to prorates and discount fares.

Upon consideration of the agreement, the carriers' justifications and other relevant matters, the Board has determined to disapprove the agreement. Documentation available to the Board indicates that the embarkation fee is levied only for departures from Italy. Accordingly, we perceive no rationale for permitting the carriers to increase round-trip fares by amounts ranging up to twice the increase in one-way fares since, in either case, the passenger would only be required to pay a single embarkation tax to the Italian authorities. Neither is it clear why a one-way passenger inbound to Italy should pay an additional $2 to "offset" an embarkation fee which would not be applicable to his journey. Finally, we see no reason why passengers who stop over in Italy en route to other destinations should not be required to pay any additional amount or why any resultant loss should be subsidized by the excess amount paid by round-trip passengers. In Order 71-3-87, cited by TWA as a precedent here, the Board was satisfied that the increases it was approving reflected amounts that individual passengers would otherwise have been required to remit directly to foreign authorities. However, in the agreement before us, the proposed fare increases appear to bear little relationship to the actual incidence of the tax. We have no objection to carriers' offsetting the revenue loss created by the tax. However, it should be done in a more equitable manner.

Pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204(a) and 412 thereof, it is found that the following resolutions, incorporated in the agreement indicated, are adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26174:			
R-1	0051	Increase in fares to/from Italy	2; 2/3; 1/1/3.
R-2	005jj	Increase in fares to/from Italy	1/2.

Accordingly, *It is ordered* That Agreement C.A.B. 26174, R-1 and R-2, be and hereby is disapproved. This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1285 Filed 1-13-77;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF TRANSPORTATION

Title Change In Noncareer Executive Assignment

By notice of June 9, 1972, F.R. Doc. 72-8751 the Civil Service Commission authorized the Department of Transportation to fill by noncareer executive assignment the position of Assistant Director for Program Coordination, Office of Public Affairs. This is notice that the title of this position is now being changed to Assistant Director for Communications Coordination, Office of Public Affairs.

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

NOTE.—This is a republication of a document which originally appeared at 42 FR 2517, January 12, 1977.

[FR Doc.77-1037 Filed 1-11-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

SUBCOMMITTEE ON EXPORT ADMINISTRATION OF THE PRESIDENT'S EXPORT COUNCIL

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. V, 1975)), notice is hereby given that a two-day meeting of the Subcommittee on Export Administration of the President's Export Council will be held on Monday, January 31, 1977, and Tuesday, February 1, 1977, at 9:30 a.m. both days, in Court Room No. 14, U.S. Post Office and Court of Appeals Building, 7th and Mission Streets, San Francisco, California.

The Subcommittee on Export Administration was initially established on June 1, 1976. On January 6, 1977, the Assistant Secretary for Administration approved the recharter and extension through December 31, 1978, of the Subcommittee, pursuant to the provisions of Section 3 of Executive Order 11753 (December 20, 1973), as extended by Section 1(k) of Executive Order 11948 (December 20, 1976).

The Subcommittee advises the Secretary of Commerce on matters pertinent to those portions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), that deal with United States policy of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

The Subcommittee meeting agenda has five parts:

MONDAY JANUARY 31, 1977

EXECUTIVE SESSION

I. Review of the role of CoCom in national security export controls:
   security export controls:
   1. Historical briefing.
   2. Procedures.
   3. Problems.
   4. Discussion and recommendations.

TUESDAY, FEBRUARY 1, 1977

GENERAL SESSION

II. Update on Department of Defense activity on the recommendations of the Defense Science Board Task Force on Export of U.S. Technology.

III. Report by the Department of Commerce on actions taken on recommendations adavnced by the Subcommittee at its meeting of October 26, 1976.
IV. Update on legislative activity.
V. Other matters.

The General Session, at which a limited number of seats will be available, is open to the public. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to Agenda Item I, the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 11, 1977, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(b)(1) (i.e., it is specifically required by Executive Order 11652 that they be kept confidential in the interest of national security). Materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under the Executive Order. All Subcommittee members have appropriate security clearances.

Copies of the minutes of the General Session will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

The complete Notice of Determination to close portions of the series of meetings of the Subcommittee on Export Administration of the President's Export Council is printed below.

For further information, contact Mr. Edward P. Kemp, Assistant to the Director, Bureau of East-West Trade, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-5334.

Dated: January 11, 1977.

EDWARD H. STROH,
Acting Deputy Assistant,
Secretary for East-West Trade.

DEPARTMENT OF COMMERCE, OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

SUBCOMMITTEE ON EXPORT ADMINISTRATION, PRESIDENT'S EXPORT COUNCIL

Notice of Determination

The Subcommittee on Export Administration was established by the Secretary of Commerce as a subordinate committee of the President's Export Council, pursuant to Section 3 of Executive Order 11753, to advise the Department of Commerce on matters pertinent to those portions of the Export Administration Act of 1969, as amended (50 U.S.C. App. § 2401 et seq.), that deal with United States policy of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security or foreign policy reasons.

The Subcommittee, which currently has seventeen members representative of U.S. industry engaged in export trade, will terminate no later than December 31, 1978 unless extended by proper authority by appropriate action. All members of the Subcommittee have the appropriate security clearances for access to classified information.

The Subcommittee's activities are conducted in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. V, 1975)), and the Office of Management and Budget Circular A-63 (revised), "Advisory Committee Management," effective May 1, 1974. Section 10 of the Federal Advisory Committee Act provides, among other things, that the meetings of advisory committees are to be open to the public, and to public participation, unless the head of the agency (or his delegate) to which the committee reports determines in writing that all, or some portion of the agenda of the meeting of the committee is concerned with matters listed in Section 552 (b) of Title 5 of the United States Code. Section 5(c) of the Government In the Sunshine Act, P.L. 94-409, effective March 12, 1977, provides that advisory committee meetings or portions thereof may be exempt from the open meeting and public participation requirements of the Federal Advisory Committee Act if the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with 5 U.S.C. § 552b(c).

Section 552(b)(1) of Title 5, United States Code, provides that information may be withheld from the public if it concerns matters specifically required by Executive Order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. 5 U.S.C. 552b(c)(1) provides that agency meetings or portions thereof may be closed to the public where they are likely to disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

A Notice of Determination authorizing the closing of Subcommittee meetings, or portions thereof, dealing with security classified matters, was approved on September 9, 1976, for a series of meetings from that date through January 5, 1977.

In order to provide advice to the Department under the terms of its charter, the Subcommittee will hold a series of meetings dealing with the matters set forth in the first paragraph of this Determination. These meetings will include discussions of the commodities and technical data subject to the CoCom control list, of the foreign availability of controlled commodities and technical data, and of other specific matters regarding export administration, much of the information relating to which is now or will be properly classified for national defense or foreign policy reasons, pursuant to Executive Order 11652, 3 C.F.R. 339 (1974). In order for the Subcommittee to provide required advice to the U.S. Government, it will be necessary to provide the Subcommittee with such classified material. Therefore, the portions of the series of meetings of the Subcommittee that will involve discussions of matters specifically authorized under criteria established by Executive Order 11652 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order, must be closed to the public. The remaining portions of the series of meetings will be open to the public.

Accordingly, I hereby determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409, that those portions of the series of meetings of the Subcommittee dealing with the aforementioned classified materials shall be exempt, for the period January 6, 1977, to December 31, 1978 from the provisions of Section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act, relating to open meetings and public participation therein, because the Subcommittee discussions will be concerned with matters listed in 5 U.S.C. §§ 552(b)(1) and 552b(c)(1). The remaining portions of the meetings will be open to the public.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary
for Administration.

ALFRED MEISNER,
Assistant General Counsel for
Administration.

[FR Doc.77-1326 Filed 1-13-77;8:45 am]

Maritime Administration

[Docket No. S-535]

INTERNATIONAL OCEAN TRANSPORT, INC.

Application

Notice is hereby given that International Ocean Transport, Inc. (IOT) has applied for written permission under section 805(a) of the Merchant Marine Act, 1936, as amended (the Act), in connection with its application for operating-differential subsidy with respect to bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on or before December 31, 1977, unless extended, or upon completion of a voyage(s) then in progress. Previous written permission under section 805(a) was granted to IOT in connection with this application for subsidy by the Maritime Administration on December 16, 1976, namely, for it to own and operate the SS's *Allegiance, Banner, Bradford Island, Fort Hoskins and Council Grove* in domestic trade.

IOT now requests written permission pursuant to section 805(a) of the Act, to own and operate the SS *Cantigny* in the domestic intercoastal and coastwise service, and for its affiliate, Interstate and Ocean Transport Company, to operate barges in the domestic intercoastal and coastwise service.

Such written permission is required notwithstanding the fact that a voyage in the proposed service for which subsidy is sought would not be eligible for subsidy if the vessel engages in domestic intercoastal or coastwise trade on that voyage.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent

to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on January 21, 1977, file same with the Secretary, Maritime Administration/Maritime Subsidy Board, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating Differential Subsidies (ODS)).

By Order of the Maritime Subsidy Board.

Dated: January 11, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-1350 Filed 1-13-77;8:45 am]

National Oceanic and Atmospheric Administration

WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of meetings of the Western Pacific Fishery Management Council, established under section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Western Pacific Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone seaward of Hawaii, Guam, and American Samoa. The Council will, among other things, prepare and submit to the Secretary of Commerce, fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

The meetings by members of the Council will be held as follows:

January 20, 1977, at 1:00 p.m. at the offices of the Division of Fish and Game, Department of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii.

January 19, 1977, at 1:00 p.m. at the Office of Marine Resources, Government of American Samoa, Pago Pago, American Samoa.

January 21, 1977, at 1:00 p.m. at the offices of the Division of Fish and Wildlife, Department of Agriculture, Government of Guam, Agana, Guam.

The proposed agenda for each meeting is the same:

1. Review of proposed regulations concerning foreign fishing.
2. Review of foreign fishing applications, if any.
3. Review of proposed allocation of the total allowable level of foreign fishing for seamount groundfish fishery resources.
4. Other matters related to fisheries management.

These meetings will be open to the public, and there will be seating for the public on a first-come, first-served basis. About 25 seats will be available at each meeting.

Members of the public having an interest in specific items for discussion are advised that changes to the agenda are at times made prior to the meeting. To receive information on changes, if any, made to the agenda interested members of the public should contact by January 14, 1977:

Mr. Doyle Gates, Director, Western Pacific Program Office, National Marine Fisheries Service, Honolulu, Hawaii, (808) 946-2181.

At the discretion of the Council, members of the public may be permitted to speak at times which would allow the orderly conduct of business. Persons who wish to submit written statements should contact Mr. Gates at the address given above.

Dated: January 11, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.77-1265 Filed 1-13-77;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1977

Additions

Notice of proposed additions to Procurement List 1977, November 18, 1976 (41 FR 50975) of the commodities listed below were published in the FEDERAL REGISTER on August 27, 1976 (41 FR 36241) and November 19, 1976 (41 FR 51054).

After consideration of all the relevant data presented, the Committee has determined that the commodities listed below are suitable for procurement by the Government under Public Law 92-28, 85 Stat. 77. Accordingly, they are hereby added to the Procurement List.

Class 1430

Circuit Card Assembly, 1430-00-080-9251, 1430-00-403-5787, 1430-00-421-4036.

Class 5940

Terminal Lug, 5940-00-549-6583.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-1280 Filed 1-13-77;8:45 am]

PROCUREMENT LIST 1977

Proposed Additions

Notice is hereby given pursuant to Section 2(a)(2) of Public Law 92-28; 85 Stat. 77, of the proposed addition of the following commodities to Procurement List 1977, November 18, 1976 (41 FR 50975).

Class 6850

Cleaning Compound, Windshield, 6850-00-926-2275.

Class 8465

Club, Policeman's Wood, Black, 8465-00-641-8551.

If the Committee approves the proposed additions, all entities of the Government will be required to procure the above commodities from workshops for the blind or other severely handicapped.

Comments and views regarding the proposed additions may be filed with the Committee on or before February 17, 1977. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

C. W. FLETCHER,
Executive Director.

[FR Doc.77-1281 Filed 1-13-77;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Availability

Environmental impact statements received by the Council on Environmental Quality from January 3 through January 7, 1977. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the minimum period for public review and comment on draft environmental impact statements in forty-five (45) days from this FEDERAL REGISTER notice of availability. (February 28, 1977) The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

DEPARTMENT OF AGRICULTURE

Contact: Coordinator of Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

1977 Gypsy Moth Suppression and Regulation Program, January 7: The Forest Service and Animal and Plant Health Inspection Service cooperate with responsible state agencies for the suppression and/or regulation of

the gypsy moth, Lymantria dispar. In 1977, regulatory activities are proposed in California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island Vermont, Virginia, and Wisconsin. Suppression activities are proposed in New Jersey, New York, and Pennsylvania. (ELR Order No. 70023.)

RURAL ELECTRIFICATION ADMINISTRATION

Final

Burlington Station, Two 50 MW Combustion Turbines, Kit Carson County, Colo., January 4: This statement has been prepared in connection with a request from Tri-State Generation and Transmission Association, Inc. for the REA to guarantee a $16,731,000 loan to finance approximately 100 MW of combustion turbine capacity to be installed at a 43-acre site in Kit Carson County. The units will be designed to fire No. 2 distillate fuel oil, with provisions for future modifications of the system if necessary. Adverse impacts include the annual emission of about 224 tons of sulfur oxides, 504 tons of nitrogen oxides, and 32 tons of particulate matter, as well as an increase in noise levels. Comments made by: EPA, USDA, COE, DOT, State and local agencies, concerned citizens. (ELR Order No. 70010.)

Supplement

Underwood Generating Station (S-1), several counties in Minnesota, January 7: This statement supplements a final EIS filed with CEQ in August, 1974. The project, now under construction, includes two 450 MW steam electric generating units and associated transmission lines. The supplement addresses the differences between the routings of the EIS and the route specified by the Minnesota Environmental Quality Council. Counties affected by routing changes are Grant, Stevens, Pope, Stearns, Meeker, Wright, and Kandiyohi (ELR Order No. 70018.)

SOIL CONSERVATION SERVICE

Draft

Furnace Brook Watershed, Warren County, N.J., January 4: The proposed channel improvement is a component of the Furnace Brook Watershed Project, which is designed to reduce floodwater damages in the village of Oxford, N.J. The planned work involves the enlargement and deepening of a 1,530 foot reach of Furnace Brook. This work will complement the previously installed upstream floodwater retarding structure to provide a 100-year level of flood protection to the village. Short term biological impacts will result. (ELR Order No. 70005.)

Final

Little Sioux River Flood Prevention Plan, several counties in Iowa, January 3: Proposed is the Little Sioux River Flood Prevention Project in Iowa, for the purpose of controlling the extensive gully erosion, sedimentation and flooding problems which characterize the program area. Though the scope of the project has been programmatically outlined through 1992, the full delineation of specific projects is awaiting further subwatershed organization and planning. Adverse effects include the disturbance and reduction of wildlife habitat by structural measures. Comments made by: COE, DOI, DOT, EPA, AHP, State and local agencies, concerned citizens (ELR Order No. 70002.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-967-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Supplement

Coastal Energy Impact Program (S-1), January 5: This statement supplements a final EIS filed with CEQ in December 1976, and contains both changes and additions to the final statement. The changes resulted primarily from last-minute comments on the regulations submitted by the Office of Management and Budget. The additions resulted primarily from a suggestion by CEQ to include discussion of additional alternative methods of implementation contained in the proposed regulations but later deleted during the formulation of interim-final regulations in response to various comments. (ELR Order No. 70014.)

ENVIRONMENTAL PROTECTION AGENCY

Please refer to the separate notice published by EPA in this issue of the FEDERAL REGISTER for the appropriate EPA contact.

Draft

Lignite-Fired Steam Generators, Performance, January 6: Proposed are performance standards for lignite-fired steam-generators. Data gathered since 1971 are sufficient to propose amendments to Subpart D of 40 CFR Part 60 to limit atmospheric emissions of nitrogen oxides to 260 nanograms per joule heat input (0.6 lb. per million Btu) from lignite-fired steam generators with a heat input of 73 MW thermal (250 million Btu per hour), equivalent to about 25 MW electrical. Control of nitrogen oxides emissions to 260 ng/J would reduce emissions from lignite-fired steam generators operating in 1980 by 29 percent. (ELR Order No. 70020.)

Jacksonville Wastewater Treatment System, Jackson County, Oreg., January 6: Proposed is the construction of a wastewater disposal system for the City of Jacksonville, Jackson County, Oreg. Various alternatives for the 1,300-acre city include a hookup by Jacksonville to the Bear Creek Valley Sanitary Authority, local treatment and use of reclaimed water by the U.S. Forest Service, and aerated lagoons with adjacent agricultural use. Adverse effects will vary according to the alternative selected. (Region X) (ELR Order No. 70019.)

Final

Calumet Tunnel System, TARP, Illinois, January 3: The statement concerns the Calumet Tunnel System which consists of one waste treatment plant and one main storage reservoir. The tunnel will reduce the pollutant load currently discharged to Chicago's waterways. Adverse effects include rock spillage, temporary public annoyance during construction and possible groundwater infiltration or wastewater infiltration. (Region 5) Comments made by: EPA, COE, DOI, USDA, DOC, DOT, DLAB. (ELR Order No. 70001.)

FEDERAL ENERGY ADMINISTRATION

Contact: Mr. Robert Stern, Director, Office of Environmental Impact, Federal Energy Administration, New Post Office Bldg., room 7119, 12th and Pennsylvania Ave. NW., Washington, D.C. 20461, (202) 961-8621.

Final

Bryan Mound Salt Dome, SPR, Brazoria County, Tex., January 7: Proposed is the implementation of the Strategic Petroleum Reserve (SPR), Title I, Part B, of the Energy Policy and Conservation Act of 1975 through the development of a 58 million barrel crude oil storage facility at the Bryan Mound salt dome. Under the initial phase of the SPR, referred to as the Early Storage Reserve (ESR), 150 million barrels of oil will be stored by 1978. The Bryan Mound site, a salt dome with existing cavities located in Texas has been identified as a candidate storage for the ESR. Adverse effects include risk of oil spillage. Comments made by: AHP, COE, EPA, NRC, State and local agencies, interested groups and persons. (ELR Order No. 70025.)

FEDERAL POWER COMMISSION

Contact: Dr. Jack M. Heinemann, Acting Assistant Director for Environmental Quality, 441 G Street, NW., Washington, D.C. 20426, (202) 275-4791.

Final

Pacific-Indonesia Project, LNG Terminal (Oxnard), Calif., January 6: Proposed is the granting of authorization to the Pacific Indonesia LNG Company to import liquified natural gas (LNG) from the Republic of Indonesia to a terminal to be constructed at Oxnard, Calif., and certification to sell the imported natural gas to Southern California Gas Company in revaporized form. Western LNG Terminal Company has concurrently filed an application seeking certification to construct certain facilities necessary to unload, store, revaporize, and transport the LNG. Environmental impact would occur with respect to effects on land use, vegetation, soils, wildlife, and water and air quality. Comments made by: TREA, COE, USDA, NRC, DOD, DOC, STAT, DOI, EPA, State and local agencies, concerned citizens. (ELR Order No. 70022.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director of Environmental Affairs, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, (202) 343-4161.

Final

Central Steam Plant, Denver Federal Center, Jefferson County, Colo., January 6: The proposed project concerns the Central Steam Plant, Building 47, located at the Denver Federal Center, Lakewood, Colo. The work covers conversion of two of the three existing boilers from natural gas/oil-firing to coal-firing, provision of baghouse particulate removal equipment, and a tall stack. In addition, minor repairs and improvements will be made at the Central Steam Plant to optimize efficiency. Short-term impacts associated with the construction work will be experienced. Comments made by: COE, DOI, EPA, DOT, FPC, State and local agencies. (ELR Order No. 70016.)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, room 7258, 451 7th Street SW., Washington, D.C. 20410, (202) 755-6308.

Draft

Pinebrook Estates Unit I, Pinellas County, Fla., January 4: Proposed is a Planned Unit Development project encompassing 284 acres or more in Tampa, Fla. Phase I will cover 26.8 M.O.L.; this entire area is designated for "Planned Unit Development" by the Pinellas Land Use Plan and has been zoned accordingly. This phase will initially provide approximately 110 single family detached residential lots. Adverse effects include the taking of land from agricultural use and increases in water, sewer, and waste disposal problems. (ELR Order No. 70007.)

Seven Springs Subdivision, Pasco County, Fla., January 4: Proposed is the development of the Seven Spring Subdivision in Tampa, Fla. The total area encompasses 249 acres M.O.L. and will eventually contain approximately 1384 single family residential units. Recreation facilities will be limited to a vol-

untary fee membership clubhouse with a swimming pool. Adverse effects include noise, dust, and run-off due to development and construction traffic in the short run. Additional burden will be placed on a strained water supply. (ELR Order No. 70008.)

Pine Trails Subdivision, Harris County, Tex., January 4: The proposed action is the acceptance of the 542-acre Pine Trails Subdivision for HUD/FHA mortgage insurance purposes. When completed in approximately six years, the subdivision will contain approximately 1,600 single family homes plus some attached single-family and multi-family housing and shopping and recreational facilities. Adverse effects include the removal of land as open space and an increased demand for fossil fuels through heavy dependence on the automobile for transportation. (ELR Order No. 70006.)

Draft

West Campus Community, King County, Wash., January 4: Proposed is the development of West Campus, a 1,600-acre planned community in South King County, Wash. The Quadrant Corporation has requested HUD/FHA subdivision approval for mortgage insurance for 508 single family lots and open space. The total development proposes 6,325 single and multifamily residential units. Negative impacts include erosion and sedimentation and increased demand on public services and infrastructure. (ELR Order No. 70011.)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Richard Chais, Supervisory Attorney Advisor for the Environmental Staff, room 2370, 12th St. and Constitution Ave. NW., (202) 343-2086.

Final

Transportation of Recyclable Materials, Freight Rates, January 6: The Interstate Commerce Commission has instituted a comprehensive investigation of discriminatory rail freight rates for the transportation of recyclable or recyled materials. This EIS analyzes (1) whether the rate structure per se has a significant effect on the relative utilization of recyclable and competing virgin materials and (2) whether general rail freight rate increases granted by the Commission in response to requests from the nation's railroads have a significant effect on relative utilization. Comments made by: EPA, DOI, State and local agencies, concerned groups and persons. (ELR Order No. 70017.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th St. SW., Washington, D.C. 20590, (202) 426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Lee's Summit Memorial Airport, Jackson County, Mo., January 4: The proposed action is the construction of Lee's Summit Memorial Airport to serve southeast Jackson County, Mo. The project will require the acquisition of the present 80-acre private McComas Airport site, as well as acquisition of 36 acres in fee for runway and taxi extension, and 29 acres in easement. Plans also call for the construction of a new paved terminal apron, paved T-hangar taxiways, and a new access road. Some land will eventually be taken out of agricultural production for airport use and increased aircraft usage will result in higher noise levels. (ELR Order No. 70012.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

I-85, Fulton-DeKalb Co. to I-285, DeKalb County, Ga., January 7: Proposed are improvements to I-85 and associated frontage and crossover roads in DeKalb County, Ga. The project would begin at the DeKalb County line near Druid Hills Road and extend northeast for 5.7 miles to an intersection with I-285. The limited access highway would have 6 or 8 lanes plus frontage road improvements. Negative effects include acquisition of a small amount of right-of-way, displacement of 4 businesses, and an increase in noise which would exceed design noise levels at one church and commercial site. (Region 4) (ELR Order No. 70024.)

I-675, Montgomery and Greene County, Ohio, January 4: Proposed is the construction of 16.53 miles of limited access highway in Montgomery and Greene Counties, near Dayton, Ohio. The project begins at existing I-75, 1.14 miles south of S.R. 725, then follows a generally northeastwardly direction to connect with a portion of the freeway recently opened to traffic at a point 0.79 mile west of North Fairfield Road. The project includes 8 interchanges, 3 railroad grade separations, 14 local grade separations, and 1 pedestrian path grade separation. A 4(f) statement is included concerning the loss of 0.25 acres of park. (Region 5) (ELR Order No. 70009.)

S.R. 16, Cheney Stadium-Narrows Bridge, Pierce County, Wash., January 4: Proposed is the reconstruction of Bantz Boulevard (S.R. 16) from the vicinity of Cheney Stadium near Center Street to Sixth Avenue in Tacoma, Wash. The balance of the highway to the Tacoma Narrows Bridge would then be constructed on a route approximately following North Ninth Street. This four-lane facility (ultimately planned as a six-lane freeway) is designed with four interchanges, two grade separations, two bike-pedestrian structures, two frontage roads, a storm sewer system, and a storm water storage basin at China Lake. The project is 3.4 miles in length. Families, businesses, and utilities will be relocated. (Region 10) (ELR Order No. 70004.)

Final

West Side Highway Project, New York, January 4: The proposed action is the construction of an Interstate System Highway which will replace the now-closed West Side Highway between the Battery and West 42nd Street in New York City. The 4.2 mile replacement facility will have connections with the Battery Park Underpass, the Brooklyn Battery Tunnel (I-278), the Holland Tunnel (I-78), West 14th Street, the Lincoln Tunnel (I-495), and the existing elevated West Side Highway at 42nd Street. As a result of the project 234 acres of land will be made available for new uses. A 4(f) statement for park lands is included (Region I.) Comments made by: DOC, HEW, DOI, DOT, EPA, State and city agencies, concerned citizens. (ELR 70003.)

L.R. 1015 and L.R. 69 Relocation, Westmoreland County, Pa., January 6: The proposed North-South Expressway provides for the construction of a multi-lane, limited access highway approximately 13 miles in length extending from the proposed interchange of existing U.S. Traffic Route 119 and relocated Traffic Route 119 between New Stanton and Youngwood to the existing interchange of Traffic Routes 22 and 66 near Delmont. The highway will displace an unspecified number of homes and businesses and will require farm land for the right-of-way. Construction disruption will result. Comments made by: EPA, HEW, DOI, USDA, State and local agencies, concerned citizens. (ELR Order No. 70018.)

U.S. POSTAL SERVICE

Contact: Emerson Smith, Director, Office of Buildings Analysis and Design, Real Estate and Buildings Department, U.S. Postal Service, Washington, D.C. 20260, 202-245-4242.

Final

U.S. Post Office and Vehicle Maintenance, Atlanta, Fulton County, Ga., January 6: Proposed is the construction of a U.S. Post Office General Mail and Vehicle Maintenance Facility in Atlanta, Georgia for 2,833 employees. The 38-acre project site is the vacant Crown Cork and Seal building in the northeast corner of Browns Mill and Crown Roads. The existing building will be expanded for use as a U.S. Post Office and will contain a gross floor area of 500,000 sq. ft. The Vehicle Maintenance Facility will occupy 38,000 sq. ft. Adverse effects include increases in noise and dust due to construction and traffic impacts on adjacent roads. (139 pages.) Comments made by: AHP, FPC, USDA, COE, HEW, HUD, DOI, DLAB, state and local agencies, concerned citizens. (ELR Order No. 70021.)

DAVID W. TUNDERMAN,
Acting General Counsel.

[FR Doc.77-1279 Filed 1-13-77;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

WAGE COMMITTEE

Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 1, 1977; Tuesday, March 8, 1977; Tuesday, March 15, 1977; Tuesday, March 22, 1977; and Tuesday, March 29, 1977 at 9:45 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower and Reserve Affairs) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552(b) of Title 5, United States Code." Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency, (5 U.S.C. 552(b)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552(b)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that this meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552-(b)(2), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a

guarantee that the data will be held in confidence (5 U.S.C. 552(b)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by contacting the Chairman, Department of Defense Wage Committee, Room 3D281, The Pentagon, Washington, D.C.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

JANUARY 10, 1977.

[FR Doc.77-1249 Filed 1-13-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

STUDY GROUP ON GLOBAL ENVIRONMENTAL EFFECTS OF CARBON DIOXIDE

Meeting

In accordance with provisions of Pub. L. 92-463 (Federal Advisory Committee Act), the Study Group on Global Environmental Effects of Carbon Dioxide will hold its first meeting on Saturday, January 29, 1977, from 10:00 a.m. to 5:00 p.m. at the Hilton Inn, Dogwood Room, Atlanta, Georgia, Airport. This meeting will be open to the public. The purpose of this meeting is to develop mechanisms for the operation of the Study Group.

The tentative agenda for the meeting is as follows:

10:00 a.m.	Opening remarks. Charles W. Edington, Associate Director for Research and Development Programs, Division of Biomedical and Environmental Research, U.S. Energy Research and Development Administration. David H. Slade, Acting Manager, Environmental Programs, Division of Biomedical and Environmental Research, U.S. Energy Research and Development Administration.
10:25 a.m.	Meeting turned over to permanent chairman. Alvin M. Weinberg, Director, Institute for Energy Analysis, Oak Ridge Associated Universities.
10:30 a.m.	Why is CO_2 a problem? Ralph M. Rotty, Institute for Energy Analysis, Oak Ridge Associated Universities.
11:15 a.m.	Additional comments. Alvin M. Weinberg, Director, Institute for Energy Analysis, ORAU. a. Dahlem conference. b. Mission of study group. c. Formulation of ERDA position. i. National policy. ii. International implications.
12:00 N.	Lunch.
1:00 p.m.	Discussion and planning for study. (Including future meeting formats, workshops, reports, methodologies, etc.) All study group members.
5:00 p.m.	Adjournment.

Practical considerations may dictate alternations in the above agenda or schedule.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items, scheduled above, the following requirements shall apply:

(a) Persons wishing to submit written statements on agenda items may do so by mailing 12 copies thereof, postmarked no later than January 14, 1977, to Dr. James L. Liverman, Director, Division of Biomedical and Environmental Research, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Comments shall be directly relevant to the above agenda items. Minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

(b) Information as to whether the meeting has been rescheduled or relocated can be obtained by a prepaid telephone call on January 26, 1977, to Mr. David H. Slade, Acting Manager, Environmental Programs, Division of Biomedical and Environmental Research, U.S. Energy Research and Development Administration on (301) 353-4374, between 8:30 a.m. and 5:00 p.m., e.s.t.

(c) Questions at the meeting may be propounded only by members of the Committee and ERDA officials assigned to participate with the Committee in its deliberations.

(d) Seating to the public will be made available on a first-come, first-served basis.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during the recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Copies of minutes will be made available for copying, following their certification by the Chairman in accordance with the Federal Advisory Committee Act at the U.S. Energy Research and Development Administration's Public Document Room, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, upon payment of all charges required by law.

HARRY L. PEEBLES,
Deputy Advisory Committee Management Officer.

[FR Doc.77-1333 Filed 1-13-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 670-7; OPP-30000/6B]

REBUTTABLE PRESUMPTION AGAINST REGISTRATION AND CONTINUED REGISTRATION OF PESTICIDE PRODUCTS CONTAINING BENZENE HEXACHLORIDE (BHC)

Correction

On October 19, 1976, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (40 FR 46024) a notice of rebuttable presumption against registration and continued registration of pesticide products containing benzene hexachloride (BHC). (See FR Doc. 76-30315). Since that date an error in the document has come to the attention of the Agency, and the following correction should therefore be made:

1. To the listing of applicants for registration of products containing BHC beginning at page 46013, the name and address of the applicant for Borertrol (EPA No. 037923-09418) should be changed from the U.S. Department of Agriculture to Affton Garden Center, 10020 Gravois Road, St. Louis MO 63123.

Dated: January 7, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1203 Filed 1-13-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

DOW CHEMICAL CO.

Action Taken on Consent Order

Pursuant to 10 C.F.R. § 205.197(c), the Federal Energy Administration (FEA) hereby gives notice of final action taken on a Consent Order.

On October 28, 1976, FEA published notice of a Consent Order which was executed between Dow Chemical Company (Dow) and FEA (41 FR 47285, October 28, 1976). With that notice and in accordance with 10 C.F.R. § 205.197(c) FEA invited interested persons to comment on the Consent Order.

No comments were received with respect to the Consent Order, FEA has concluded that the Consent Order as executed between FEA and Dow is an appropriate resolution of the Compliance proceedings described in the Notice published on October 28, 1976, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, upon publication of this Notice in the FEDERAL REGISTER.

Issued in Washington, D.C., January 11, 1977.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.77-1311 Filed 1-11-77;4:49 pm]

FEDERAL HOME LOAN BANK BOARD

[AC-25]

CITIZENS FEDERAL SAVINGS AND LOAN ASSOCIATION

Approval of Conversion

JANUARY 11, 1977.

Notice is hereby given that on January 6, 1977, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 77-29, approved the application of Citizens Federal Savings and Loan Association, Miami, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 320 First Street, N.W., Washington, D.C. 20552 and the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, 260 Peachtree Street, N.W., Atlanta, Georgia 30303.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.77-1288 Filed 1-13-77;8:45 am]

FEDERAL POWER COMMISSION

[Project No. 2628]

ALABAMA POWER CO.

Order Providing for Hearing

JANUARY 7, 1977.

On December 27, 1973, the Commission issued a major license for the R. L. Harris Project, FPC No. 2628,[1] to Alabama Power Company (Licensee).[2] The project is located on the Tallapoosa River, a navigable waterway of the United States, in Clay and Randolph Counties, Alabama. When built, project works will include a concrete gravity dam about 150 feet high and 956 feet long, a powerhouse containing two generators each rated at 67,500 kW, and appurtenant facilities. The reservoir created by the Harris Dam will extend upstream a distance of about 24 miles, and will have a surface area of approximately 10,660 acres.

On January 31, 1975, Licensee filed an application for amendment of Article 50 of the license for Project No. 2628.[3] Article 50 provides as follows:

Licensee shall purchase in fee and place within the project boundary all lands necessary for project operations including lands for recreational use and shoreline control. The lands encompassed by the project boundary shall include, inter alia:

1. All islands formed by the 793 foot contour, and

2. Shoreline lands up to the 800 foot contour, or up to a 50-foot horizontal measure from the 793 foot contour, provided that in no event shall the project boundary be established at less than the induced surcharge storage elevation at the 795 foot contour.

Licensee shall file a revised Exhibit F and, for Commission approval, a revised Exhibit K within one year after commencement of operation of the project.

The application seeks amendment of Article 50 to provide that acquisition of lands up to the 800 foot contour, or up to 50 feet horizontally from the 793 foot contour, be limited to lands currently owned by Licensee. In areas bordering the reservoir's future shoreline not owned by Licensee at present, Licensee proposes to limit its interests to a two-foot easement, from the 793 to the 795 foot contour, for flood control purposes.

In support of the application, Licensee states that the shoreline restrictions imposed by Article 50 will discourage use of the reservoir; local citizens and landowners have voiced strong opposition to the article's requirements; Licensee owns sufficient shoreline lands to provide for adequate public access and recreational use; Article 50 will discourage economic growth and development of the area; and the administrative costs attributable to resource management will be sufficiently high to adversely affect the project's economic feasibility.

The application includes a motion that a hearing respecting Article 50 be held in Wedowee, Alabama, to allow the presentation of testimony and comments by citizens and landowners in the vicinity of the project.

Public notice of the application was given on June 10, 1976. In response, the Commission has received several hundred letters from residents and landowners in the project area; the bulk of these support the application and request a public hearing in the project area. Responses opposing the proposed amendment have also been received, including the comments of the Department of the Interior. Intervention has been granted to six parties, each of whom requests a hearing in the project vicinity.

We believe that an evidentiary hearing should be held on the issues raised by Licensee's application. We also believe, due to the public response to public notice of the application, that Licensee's motion for a public session in the project vicinity is appropriate, to receive the views and comments of interested citizens and landowners. We shall leave the exact time and place of such public session to determination by the Presiding Administrative Law Judge, along with the question whether cross-examination of witnesses or introduction of evidence should also take place at the local session to avoid hardship to the parties.

The Commission finds: (1) It is appropriate for purposes of the Federal Power Act and in the public interest that a public hearing be held on the issues raised by Alabama Power Company's application for amendment of the license for the R. L. Harris Project, FPC No. 2628, filed on January 31, 1975.

(2) Alabama Power Company's motion for a hearing session to be held in the vicinity of the project, to receive the views and comments of local citizens and landowners, should be granted.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly sections 4(e), 10(a), 10(g), 307, and 308 thereof, and the Commission's Rules of Practice and Procedure, a pre-hearing conference shall be held at 9:30 a.m. on February 10, 1976, in a hearing room of the Federal Power Commission, 825 North Capitol Street, Washington, D.C., concerning the issues raised by Alabama Power Company's application to amend Article 50 of its license for the R. L. Harris Project FPC No. 2628.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to § 3.5(d) of the Commission's Regulations, 18 CFR 3.5(d) (1975), shall preside at the hearing in this proceeding, with authority to establish and change all procedural dates and to rule on all motions, with the exceptions of petitions to intervene, motions to consolidate and sever, and motions to dismiss, as provided in the Commission's Rules of Practice and Procedure.

(C) The Presiding Administrative Law Judge shall hold a public hearing session in the vicinity of the project, for the purpose of receiving statements of position from interested members of the public. Public notice of the hearing session shall be given in the vicinity of the project prior to the session. At the discretion of the Presiding Judge, a portion of the formal evidentiary hearing in this proceeding may also take place at the local hearing session, to avoid hardship to the parties.

(D) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent they are modified or supplemented herein.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1274 Filed 1-13-77;8:45 am]

[Docket No. RP76-135]

CITIES SERVICE GAS CO.

Extension of Time

JANUARY 7, 1977.

On December 23, 1976, Staff Counsel filed a motion to further extend the date for service of Staff top sheets, as fixed by order issued August 19, 1976, and modified by notice issued November 11, 1976, in the above-designated proceeding. On December 2, 1976, the Commis-

[1] Alabama Power Company changed the project's designation from the "Crooked Creek Project" to the "R. L. Harris Project" in 1974.

[2] 50 F.P.C. 1984 (1973).

[3] The application also sought amendment of Article 8 of the license, which specified the rate of return on project net investment. By letter of the Secretary dated August 24, 1976, pursuant to our Order No. 550, issued June 24, 1976, a new license article dealing with amortization reserves was added to the license. The relief relating to rate of return has, therefore, already been granted and need not concern us further.

sion denied Staff's renewed motion for an extension of time, filed November 19, 1976, without prejudice to renewal of the motion specifying the data of the Company Staff does not possess and needs in the preparation of its case. Staff's present motion specifies the necessary data and states that counsel for the Company has no objection to the extension.

Notice is hereby given that, for good cause shown, a further extension of time is granted to and including February 18, 1977.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1277 Filed 1-13-77;8:45 am]

[Docket No. CP77-104]

COLUMBIA GAS TRANSMISSION CORP.

Application

JANUARY 6, 1977.

Take notice that on December 21, 1976, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP77-104 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Johns-Manville Sales Corporation (Manville), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Manville an average of 1,000 Mcf of natural gas per day for a period of two years following the date of first delivery for use at two of Manville's plants in Waterville, Ohio. It is stated that the subject gas would be received by Applicant at a mutually agreeable point on Applicant's Line F0-1633 in Valley Township, Guernsey County, Ohio, from M-G Exploration Company (M-G), a partnership in which Manville holds a majority interest, and redelivered by Applicant for the account of Manville to both Columbia Gas of Ohio, Inc. (Columbia), and The Waterville Gas and Oil Co. (Waterville Gas) at existing points of delivery in Lucas County, Ohio. Applicant states that of the 1,000 Mcf average daily volume, 100 Mcf would be delivered to Columbia and 900 Mcf per day will be delivered to Waterville Gas for redelivery to Manville. It is stated that both Columbia and Waterville Gas are natural gas distribution companies and wholesale customers of Applicant, that Manville's Waterville No. 1 plant is served by Columbia, and that Manville's Waterville No. 7 plant is served by Waterville Gas. The volumes to be transported for Manville under the proposed service would be subject to Applicant's pipeline capacity and would be further limited by those volumes required to offset curtailments affecting the two Manville plants.

It is indicated that pursuant to a gas sales contract between Manville and M-G, dated February 18, 1976, M-G agrees to sell all the natural gas produced from the following wells located in Guernsey County, Ohio: No. 1-M Nicholson-Morris Unit, No. 1-M William E. Ball, No. 1-M Watson-Rogers-Ball Unit, No. 2-M Watson, No. 1-M Watson, and such other wells as may be added by mutual agreement. The price agreed to is $1.45 per Mcf at the point of delivery to Applicant.

Applicant states that it would retain 3.1 percent of the volume received for transportation as make-up for line loss and compression fuel and that the initial transportation charge would be 24.49 cents per Mcf of natural gas. Applicant asserts that since the proposed transportation service would be provided only when sufficient capacity is available, the proposal would have no impact on its ability to deliver to Priority 1 markets. The subject natural gas supply is said not to be available for purchase by Applicant since the terms of majority partnership interest held by Manville in the producer, M-G, make the subject gas unavailable to interstate markets.

It is stated that Manville's Waterville Plant No. 1 produces glass fiber industrial products such as roving, woven roving and chopped strand for plastic reinforcement and base fiber for fiberglass mats used for roofing materials and pipeline corrosion protection. The plant employes a total of 272 workers at an annual payroll of over $6,000,000. Natural gas is utilized in this plant for heating molton glass forehearths where very accurate temperature control is required and for the operation of a direct fired drying oven where no appreciable fuel contamination can be tolerated. It is stated that Waterville Plant No. 7 produces microfibers, filter tubes, fiberglass mats, and base fiber materials used for ablative shielding for the NASA space project. The plant employes 184 persons at an annual payroll of over $2,250,000. Waterville Plant No. 7 uses gaseous fuel for attenuation of fine glass fibers used for insulation and for the production and drying of high-purity microquartz fibers used in the construction of surface shielding for the NASA space shuttle. It is further stated that both Columbia and Waterville Gas are and will continue to curtail significant deliveries of natural gas to Manville and that in 1975 Manville used 1,964,248 gallons of propane at its Waterville plants.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1276 Filed 1-13-77;8:45 am]

[Docket No. CI77-191]

DIAMOND SHAMROCK CORP.

Application

JANUARY 6, 1977.

Take notice that on December 28, 1976, Diamond Shamrock Corporation (Applicant), P.O. Box 631, Amarillo, Texas, 79105, filed in Docket No. CI77-191 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to Northern Natural Gas Company (Northern) from Diamond Shamrock's McKee Plant located in Moore County, Texas, for a period ending March 31, 1978, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Diamond Shamrock seeks limited-term certificate authority for a sale of residue gas to Northern in accordance with a Residue Gas Purchase contract between the parties dated December 17, 1976, but effective for the limited period commencing February 18, 1977, and ending March 31, 1978. Said contract provides for an initial base rate of $1.44 per Mcf and is subject to adjustment for taxes, Btu content, and gathering. The rate is further subject to quarterly adjustments of 1 cent per Mcf commencing April 1, 1977.

All of the wells from which the residue gas will be derived were commenced, or spudded, after May, 1976. The proposed rate is well below the rate of $1.90 per Mcf provided in Diamond Shamrock's intrastate contract with Southwestern Public Service Company.

Diamond Shamrock's residue gas supply will be available for the proposed interstate sale to Northern only until April 1, 1978. On April 1, 1978, Southwestern Public Service Company will purchase the gas from Diamond Shamrock pursuant to a contract dated December 15, 1976. Said contract is effective through March 31, 1985, and provides for an initial rate of $1.90 per Mcf.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 17, 1977, file with the Federal Power Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1271 Filed 1-13-77;8:45 am]

[Docket No. RP76-90]

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC.

Tariff Filing

JANUARY 7, 1977.

Take notice that on December 27, 1976, Kansas-Nebraska Natural Gas Company, Inc. (K-N), P.O. Box 608, Hastings, Nebraska 68901, filed in Docket No. RP76-90 pursuant to section 4 of the Natural Gas Act proposed changes to sections 13 and 18 of the General Terms and Conditions of its FPC Gas Tariff, Third Revised Volume No. 1. K-N's proposed tariff changes deal with provisions for (1) gas storage injection and withdrawal, (2) allocation of delivery capability by priority, (3) emergency relief and (4) notices. The proposed effective date of K-N's tariff sheets is February 1, 1977. K-N's proposals are more fully set forth in the tariff sheets on file with the Commission and open to public inspection.

K-N states that its gas reserves have been adequate to meet all firm requirements but have been declining rapidly because of a trend over the past several years, and expected to continue, whereby annual requirements have exceeded annual reserves added. Accordingly, and in specific response to Commission Order 431 (45 FPC 570 (1971)), K-N submits as a new subparagraph (3) to § 13.b of the General Terms and Conditions of its FPC Gas Tariff its curtailment plan which provides as follows:

(3) *Allocation of Delivery Capability.*

(i) Whenever the delivery capability of Seller's system, due to any cause whatsoever not limited to force majeure, is such that Seller is unable to deliver to consumers served directly by Seller and consumers served indirectly by Seller through Buyer the quantity of gas which the consumers require and to fulfill its requirements to inject gas into its storage facilities, deliveries shall be reduced uniformly to consumers of Seller and for consumers served by Buyer and within each step the reductions shall be made pro-rata as follows:

Step 1: Boiler fuel use by industrial consumers having a requirement for such use on a peak day of more than 10,000 Mcf.

Step 2: Boiler fuel use by industrial consumers having a requirement for such use on a peak day of more than 3,000 Mcf but not more than 10,000 Mcf.

Step 3: Boiler fuel use by industrial consumers having a requirement for such use on a peak day of more than 1,500 Mcf but not more than 3,000 Mcf.

Step 4: Boiler fuel use by industrial and commercial consumers having a requirement for such use on a peak day of more than 300 Mcf but not more than 1,500 Mcf.

Step 5: Industrial use not specified in Steps 1, 2, 3, 4 and 6 having a peak day requirement for such use of more than 500 Mcf.

Step 6: Requirements of all consumers not specified in Steps 1, 2, 3, 4, 5, 7 and 8.

Step 7: All uses by commercial consumers on a peak day of more than 50 Mcf except for boiler fuel use by commercial consumers having requirements on a peak day of more than 300 Mcf, and requirements of all industrial consumers for plant protection, feedstock and process needs.

Step 8: Requirements of residential consumers and of commercial consumers having requirements on a peak day of less than 50 Mcf.

(ii) The terms "residential", "commercial", "industrial", "boiler fuel", "feedstock gas", "process gas", and "plant protection gas" as used above are defined in accordance with the definitions prescribed in 18 CFR 2.78(c) as that paragraph (c) may be amended from time to time.

K-N states that the lowest priority requirements are listed first and the highest priority requirements last so as to correspond with the sequence of the reduction steps. K-N anticipates that initially all reductions of deliveries will be to interruptible customers in steps 1 through 5.

K-N states that the foregoing subparagraph (3) replaces the present subparagraph (3) which deals with "Gas for Storage Injection." Furthermore K-N submits a new subparagraph (4) which deals with procedural rules, a new subparagraph (5) dealing with "Storage Withdrawals" which replaces the present subparagraph (4), subparagraph (6) dealing with "Variations in Procedures", subparagraph (7) on "Demand Charge Adjustments" and subparagraph (8) describing the "Index of Requirements". In addition, K-N states that subparagraph (2) has been amended by the addition at the end of one clarification sentence, that First Revised Sheet No. 14 deletes the word interruptible from the last sentence of Section 2, that First Revised Sheet No. 25 reflects a change in Section 18 to provide for oral notice of orders pursuant to Rate Schedule IOR and under Section 13.b of the General Terms and Conditions, and that Original Sheets 33 through 37 set forth the Index of Requirements for Consumers in Reduction Steps 1 through 5.

K-N notes that the present § 13.b of the General Terms and Conditions of its FPC Gas Tariff, Third Revised Volume No. 1 was originally filed on August 29, 1975 as a part of a rate increase filing in Docket No. RP76-8. K-N adds that subsequent to the time the tariff sheets containing section 13 became effective pursuant to the requirements of section 4 of the Natural Gas Act, the Commission issued an order in Docket No. CP75-334, et al. on April 26, 1976 which severed the "curtailment issues" raised in Docket No. RP76-8 from the price issues in that docket and redocketed the "curtailment issues" as Docket No. RP76-90. On June 10, 1976, the Commission issued in Docket No. RP76-90 a "Re-Notice" of the tariff sheets in question, referring specifically to Section 13.a and § 13.b. On December 21, 1976, the Commission issued an order in Docket No. RP76-90 setting for evidentiary hearing the issues relating to the present section 13 of the General Terms and Conditions.

Any person desiring to be heard or to make any protest with reference to said filing should on or before January 17, 1977, file with the Federal Power Commission, Washington, D.C. a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1270 Filed 1-13-77;8:45 am]

[Opinion No. 782-A; Docket No. RP73-110]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Opinion and Order Denying Rehearing

JANUARY 6, 1977.

On December 9, 1976, Hawkeye Chemical Company (Hawkeye), Northern Illinois Gas Company and Northern Indiana Public Service Company (NIPSCO and NI-Gas) and the Brooklyn Union Gas Company (Brooklyn) filed applications for rehearing of the Commission's Opinion No. 782, issued November 9, 1976, in this proceeding. The parties, for varying reasons, request that the Commission reverse the determination in Opinion No. 782 that the *United* method of rate design be used to distribute costs on Natural Gas Pipeline Company of America's (Natural's) system and that the Commission prescribe in lieu thereof the *Seaboard* method. For the reasons discussed below, the Commission shall deny the three applications for rehearing of Opinion No. 782.

NIPSCO and NI-Gas and Brooklyn Union argue that there is no evidence to support the Commission's finding that a shift from *Seaboard* to *United* will narrow the price gap between the price of gas the price of competitive fuels. The claim is made that the rate design change will only cause more dollars to be collected from high-load factor customers and fewer dollars to be collected from low-load factor customers without regard to their end use profiles and that Natural's total revenues collected will remain the same. They also argue that the *United* rate design will not affect price discounts enjoyed by industrials.

These arguments are unpersuasive. The Commission found in Opinion No. 782 that a switch from *Seaboard* to *United* would narrow the gap between the price of industrial gas and the costs of alternate fuel because such a shift would result in an increase in the commodity rate charged to Natural's customers (mimeo, p. 12). The United States Court of Appeals for the Seventh Circuit in *Fuels Research Council, Inc.* v. *F.P.C.*, 374 F. 2d 842, 854 (7th Cir. 1967), discussed the relationship between the pipeline supplier's commodity rate levels and the retail industrial rates in an earlier case involving the rate design of Natural, among others:

> The rates for industrial interruptible sales are set by the state regulatory commissions. The lowest of such rates are usually fixed at something in excess of the "incremental cost" of gas. The incremental cost is said to be the cost of the gas to the distributors plus local transportation costs plus state and local taxes. Significantly, the commodity component of the pipeline rate is used as the cost of the gas. The demand component of the pipeline rate is disregarded by the state commissions for purposes of interruptible rates. The level of the pipelines' commodity component is therefore extremely important to the pipelines and the distributors, quite apart from the reasons discussed earlier.[14]

Thus, the Commission by assigning more costs to the commodity component of Natural's rates, is narrowing the gap between the price for industrial gas and the price of alternate fuels, whether those industrials are served by high-load factor or low-load factor customers of Natural.

These petitions also argue that the shift to *United* will not affect conservation among industrial customers because Natural is already curtailing industrial sales such that these industrial customers can no longer get all of the gas they are demanding. Moreover, there are unfulfilled waiting lists of new industrial customers. Thus, it is argued that existing industrial users will conserve the gas they are receiving in light of the scarcity which currently exists. While it is true that there is some incentive for industrials to conserve gas on Natural's system without a switch to *United*, the Commission does not believe it is sufficient to warrant retention of the *Seaboard* rate design. As the U.S. Court of Appeals for the D.C. Circuit noted recently in *Consolidated Gas Supply Corporation* v. *F.P.C.*, 520 F.2d 1176 at 1186:

> Due to the increasing costs of coal and oil and the growing scarcity of natural gas, it is no longer necessary to lure industrial customers with relatively low commodity charges.

Brooklyn Union argues that *United* discrimates against those customers such as NI-Gas who have extensive storage operations[15] which enable those customers to purchase gas at a high load factor. It is argued that by installing these storage facilities in the past, these customers benefited all of Natural's customers by obviating the need for Natural to install additional main line capacity to meet peak-day demands. Trying to determine today, in a time of gas shortage, exactly what alternative sources of peak-day gas would have been available to the customers of Natural who constructed storage facilities in time past, when gas was more plentiful, is a speculative exercise and is no basis for rejecting a rate design more reflective of the current operating conditions on Natural's system. Moreover, since storage facilities provide the owner thereof with many advantages, such as operating flexibility and a higher priority of service from Natural, the decision to construct such facilities is clearly based on more than a desire to achieve lower unit costs of purchased gas. In any event, these high-load factor customers of Natural with storage have enjoyed lower prices under *Seaboard* and tilted *Seaboard* rate designs,[16] and will continue to enjoy a price discount through lower average unit costs of purchased gas under *United*, albeit to a lesser extent. Moreover, as high load factor, higher volume purchasers, they will make greater use of the system on an annual basis and therefore should bear more of the capacity (fixed) costs than would be the case under *Seaboard* rates, which had their origin in a time of plentiful gas supply.

Brooklyn Union also alleges that the Commission gave inappropriate consideration to the fact that in the *United* case there were substantial curtailments on the peak day, whereas on the Natural system there were not. Therefore, even though there are curtailments on an annual basis, Brooklyn Union argues that the peak function is unaffected and therefore no fixed costs should be shifted from the demand to the commodity component. Inasmuch as this issue was discussed in detail in Opinion No. 782 (pp. 14-16), there is no need for further discussion herein.

In a somewhat different vein from the other petitioners, Hawkeye argues for adoption of *Seaboard* precisely because of the fact that, as an industrial customer purchasing gas from one of Natural's customers, it will have to pay higher rates. Hawkeye raises some arguments which are similar to those of the other petitioners which have already been dealt with herein and require no further discussion. However, the main arguments raised by Hawkeye are that no substantial unused capacity exists on Natural's system to justify a switch to a *United* rate design and that since Hawkeye is a high priority industrial user, it should not pay as high a rate as a boiler fuel user. Opinion No. 782 shows that there have been and will continue to be substantial curtailments on an annual basis on Natural's system (pp. 14-16). Contrary to Hawkeye's contentions, these curtailments are clear evidence of the existence of unutilized capacity on Natural's system on an annual basis sufficient to justify a change from *Seaboard* to *United*. As to Hawkeye's second argument, we find no reason why Hawkeye's rates, as well as those of other industrial users, should not be brought into closer parity with the price of competitive fuels. This result is consistent with the Commission's curtailment priorities of favoring residential and small commercial users over industrial users.

The Commission finds: No facts or issues have been raised by petitioners

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[14] The importance of the commodity components in the pipelines' rate designs was succinctly stated by the Commission: "They are important for the reason that the State commissions apply a floor on industrial resale rates at the commodity cost of the gas plus incremental (local out-of-pocket) charges incurred in making deliveries. Thus, an increase ordered in Midwestern's and Natural's commodity components could be expected to be ultimately reflected in increases ordered by the State commissions in the distributors' rates."

[15] Brooklyn Union also argues that because of *Natural's* storage operations, the *Seaboard* rate design should be retained. The Commission is not persuaded that this is a basis for retention of the *Seaboard* rate design.

[16] See *Fuels Research, infra.*

to warrant any modification in Opinion No. 782.

The Commission orders: (A) The applications for rehearing of Opinion No. 782 filed on December 9, 1976, by Brooklyn Union, NIPSCO and NI-Gas, and Hawkeye are hereby denied.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1273 Filed 1-3-77;8:45 a.m.]

[Docket No. CP77-94]

NORTHWEST PIPELINE CORP.

Application

JANUARY 7, 1977.

Take notice that on December 15, 1976, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP77-94 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Mountain Fuel Supply Company (Mt. Fuel) on a deferred basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange natural gas with Mt. Fuel under the terms of a deferred gas exchange agreement (Agreement) entered into between the parties and dated December 10, 1976. The Agreement, it is stated, calls for the delivery of natural gas by Mt. Fuel to Applicant during the period commencing with the granting and acceptance of regulatory approval and continuing through April 30, 1977, and the redelivery of equivalent volumes of gas to Mt. Fuel by Applicant beginning June 1, 1982. The Agreement provides further, it is stated, that initial exchange volumes would not exceed an average of 20,000,000,000 Btu's per day for any seven-day period beginning on any Monday and shall be limited to a total of 2,000,000,000,000 Btu's for the entire delivery period. It is stated that Applicant would redeliver a volume of gas equivalent to volumes taken from Mt. Fuel plus an additional 3.0 percent to compensate Mt. Fuel for line loss and compressor fuel. Such redeliveries, it is stated, would begin on June 1, 1982; and Applicant, it is stated, would be required to use its best efforts to redeliver no less than 20 percent and not more than 35 percent of the volumes due during each summer season beginning on June 1, 1982. It is stated that any balance due Mt. Fuel as of September 30, 1986, would be redelivered to Mt. Fuel during the period June 1, 1987, through September 30, 1987, or, at Mt. Fuel's option, would be immediately paid for by Applicant.

It is stated that delivery would be made at an existing point of interconnection between Mt. Fuel's and Applicant's facilities in Sweetwater County, Wyoming. Applicant would pay Mt. Fuel 40.88 cents per 1,000,000 Btu's of natural gas, the current average price of gas stored in Mt. Fuel's Leroy Storage Reservoir, plus an additional two cents per 1,000,000 Btu's for all exchange volumes delivered to compensate Mt. Fuel for alcohol treatment and storage withdrawal. Mt. Fuel would pay Applicant 40.88 cents per 1,000,000 Btu's upon the redelivery of exchange volumes.

It is indicated that the exchange volumes which Mt. Fuel proposes to deliver to Applicant under the proposed exchange agreement would enable Applicant partially to offset the 1976-77 heating season shortfall of 240,000 Mcf per day anticipated from Applicant's Canadian imports. It is estimated that Mt. Fuel does not require the full withdrawal capacity of its underground storage facilities during the 1976-77 winter heating season and can, therefore, make such unused withdrawal capability available to Applicant under the proposed exchange. It is indicated that Mt. Fuel can, in its sole opinion, discontinue exchange deliveries when its system requires partial or complete restoration of service and, furthermore, that Mt. Fuel would make deliveries to Applicant only on those days when one or more of Applicant's firm customers are requesting service under Applicant's Rate Schedule SGS-1 (Jackson Prairie Storage Service) or Rate Schedule LS-1 (LNG service). Mt. Fuel would deliver the exchange gas by authorizing Applicant to reduce deliveries otherwise due Mt. Fuel under Applicant's Rate Schedule PL-1.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1275 Filed 1-13-77;8:45 am]

[Docket No. CP7793]

TEXAS GAS TRANSMISSION CORP.

Application

JANUARY 6, 1977.

Take notice that on December 15, 1976, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP 77-93 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of H. H. Robertson Company (Robertson), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Robertson an average of 235 Mcf of natural gas per day, on a interruptible basis, for a period of two years for use at Robertson's plant located in Connersville, Indiana. Applicant states that the maximum daily transportation volume would be 360 Mcf. It is stated that subject gas would be received by Applicant at a metering station to the constructed and operated by Applicant located in Union Parish, Louisiana, near Block Valve No. 4 on Applicant's Sharon-Bastrop 26-inch line and would be redelivered by Applicant at an existing point of delivery to Ohio Valley Gas Corporation (Ohio) for the account of Robertson. It is indicated that Ohio is an existing resale customer of Applicant and that Ohio is the distribution company which serves Robertson's Connersville, Indiana, plant.

It is indicated that pursuant to a gas sales contract between Robertson and Ergon, Inc. (Ergon), dated September 10, 1976, Ergon agrees to supply up to 360 Mcf and no less than 180 Mcf of natural gas per day to Robertson from the Monroe Gas Field in Union Parish, Louisiana. It is indicated that the point of delivery under the contract is at the point of interconnection of Ergon's gathering facilities and Applicant's pipeline and that the price per Mcf as $1.60 for the two-year term of the agreement.

Applicant states that it will retain 10.8 percent of the volume received for transportation as make-up for compressor fuel and line loss and that the transportation charge will be 18.03 cents per Mcf. Applicant asserts that the proposed transportation service will have no appreciable effect on its mainline system. Applicant states that it did not consider the subject natural gas supply available to it since Ergon indicates that the sub-

ject gas would only have been sold in intrastate markets or sold to other Priority 1 users under § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79).

It is indicated that Robertson uses natural gas to bake finishes on metal sidewall building panels which are manufactured at its Architectural Products Division plant in Connersville, Indiana. It is further indicated that current and anticipated Priority 2 curtailments would result in the lay-off of one-third of Robertson's Connersville employees or more than one hundred persons and would impair the manufacturer's ability to produce its building materials. It is stated that the building materials manufactured at the Robertson plant are in high demand because of their insulating properties and that conversion to oil fuel would produce, depending on the particular process involved, either panels of unacceptable quality or panels at a uncompetitive price.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on 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.77-1272 Filed 1-13-77;8:45 am]

TRANSCONTINENTAL GAS PIPE LINE CORP.

[Docket Nos. RP74-48 and RP-75-3]

Extension of Time

JANUARY 6, 1977.

On December 30, 1976, Transcontinental Gas Pipe Line Corporation (Transco) filed a motion for an extension of time to make additional interest payments to its customers, as required by ordering paragraph (B) of the Order issued December 6, 1976, in the above-designated proceeding. Transco filed on January 5, 1977, an application for rehearing of the December 6 Order.

Pursuant to Section 1.34 of the Commission's Rules and Regulations, the Commission must act within thirty days, or by February 4, 1977, on the application for rehearing. Therefore, an extension to comply with the December 6, 1976, Order is granted to and including March 7, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1269 Filed 1-13-77;8:45 am]

[Docket No. E-7638; Docket No. E-7647]

PUBLIC SERVICE CO. OF INDIANA, INC. AND SOUTHERN INDIANA GAS & ELECTRIC CO.

Settlement

JANUARY 4, 1977.

Take notice that on December 1, 1976, the Public Service Company of Indiana, Inc. (PSCI) and Southern Indiana Gas & Electric Company (SIGECO) filed a motion with the Commission for an order to "Reaffirm and Ratify The Commission's Prior Findings and Order and Terminate Proceedings" and attached thereto a proposed settlement agreement.

PSCI and SIGECO indicate in their motion, that on June 8, 1971, in Docket No. E-7647, the parties filed an interconnection agreement as an initial rate schedule, and in Docket No. E-7638, as of the same date, PSCI and SIGECO applied for authority to sell certain electric facilities in accordance with the interconnection agreement. By order issued May 26, 1972, the Federal Power Commission simultaneously accepted for filing the Rate Schedule in Docket No. E-7647 and authorized disposition of the facilities in Docket No. E-7638. An appeal to the Commission's order of May 26, 1972, was filed in the United States District Court of Appeals for the District of Columbia Circuit by the City of Huntingburg, Indiana and the Indiana Municipal Electric Association Corporation (IMEA) Cities.

On review the Court of Appeals, *City of Huntingburg, Indiana* the FPC, 498 F.2d 778, 780 (1974), stated *inter alia:*

> * * * [T]he Cities argue that certain provisions of the [interconnection] agreement would produce substantial anticompetitive effects in the market served by PSCI and SIEGCO. They seek an order instructing the FPC to excise the disputed provision from the interconnection agreement or, in the alternative, an order remanding the case to the Commission for an evidentiary hearing on whether the challenged provisions, if retained, would advance the public interest.
>
> On the record supplied to us on review and the Opinion accompanying the Commission's order, we are unable to discern the reasons for the Commission's decision to accept the allegedly restrictive provisions of the interconnection agreement as part of the PSCI-SIEGCO rate filing. We therefore remand to the Commission for hearings in accordance with Part III of this Opinion.

The Court's Opinion, Part III, page 788, identified the specific "fundamental" question to be decided by the Commission as follows:

> On remand the Commission should endeavor to answer several questions. The fundamental inquiry is whether the provisions of the interconnection agreement challenged by the Cities represent negative restrictions[1] on the Statewide's potential as a competitor with PSCI and SIEGCO. If the Commission finds that there are no negative restrictions in the Agreement, as counsel suggested at oral argument, the inquiry will be at an end.

Attached to the December 1, 1976, motion of PSCI and SIEGCO is a "Proposed Settlement Agreement of Parties" and "Proposed Stipulation of the Parties to the Hoosier Interconnection Agreement" as well as an attachment entitled "Statement of Bulk Power Supply Policies".

Applicants PSCI and SIEGO submit that their motion for resolution and termination of the proceedings as supported by their proposed settlement and stipulation are sufficient to indicate to the Commission that there are no negative restrictions in the agreement and the Dockets can be terminated without further evidentiary hearing.

Any person, desiring to be heard or to protest said settlement agreement should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 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 14, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this settlement agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1431 Filed 1-13-77;8:45 am]

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[1] We employ the term "negative restrictions" to denote those restrictions that are not simply necessary incidents of the parties' positive undertakings to interconnect, consult on planning, and the like.

[Docket No. RM75-13; Order No. 555-A]

PUBLIC UTILITIES AND NATURAL GAS COMPANIES; POLICIES AND INTERPRETATIONS

Order Denying Rehearing

JANUARY 6, 1977.

In the matter of amendments to Uniform Systems of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C, and D) and to Regulations under the Federal Power Act and the Natural Gas Act, to Provide for Inclusion of Construction Work in Progress in Rate Base.

Applications for rehearing of the Commission's Order No. 555, issued November 8, 1976 (41 FR 51392, Nov. 22, 1976), in this proceeding, were filed on December 7, 1976, by Georgia Power Company (Georgia), The Connecticut Municipal Group (Connecticut Municipals), and on December 8, 1976, by Pacific Gas & Electric Company (PG&E), Public Systems,[1] Mississippi Power & Light Company (MP&L), Regulated Electric Utility Group (Regulated Group),[2] as supplemented on December 10, 1976, and Southern California Gas Company (So-Cal). On December 20, 1976, the Regulated Group also filed a motion for reconsideration of Order No. 555. For the reasons set forth below, the Commission shall deny the requests for rehearing or modification of Order No. 555.

Public Systems advanced several reasons against the proposed inclusion of certain CWIP in rate base. Many of these reasons are also advanced by Connecticut Municipals. Specifically, among other things, they argue that Order No. 555, by permitting CWIP associated with pollution control and conversion costs in the rate bases of electric utilities, will create "price squeezes" contrary to *F.P.C.* v. *Conway Corp.*, 426 U.S. ____, 96 S.Ct., 1999 (1976), in those states where the state commissions do not permit CWIP on the same plant to be included in rate base for retail rate purposes. They argue that the Commission has not set forth sufficient offsetting benefits of including CWIP in rate base which might outweigh the alleged anticompetitive effects of such inclusion.

The Commission agrees that it is under an obligation to eliminate undue discrimination where a "price squeeze" is found to exist and has so stated in its "Notice of Proposed Rulemaking" issued July 29, 1976, in Docket No. RM76-29. Accordingly, the Commission shall review "price squeeze" allegations in individual electric rate proceedings and shall, of course, consider all relevant evidence. The instant rulemaking, which prescribes general rules for exclusion and inclusion of various types of CWIP in rate base, is not the appropriate forum to determine under what future circumstances a "price squeeze" might exist on hypothetical electric utility systems.

It is also urged that prior to permitting any CWIP in rate base, the utility should come forward with evidence to show that it has exhausted other sources of capital such as, among others: tax incentives (for pollution control devices), and cooperative financing with publicly-owned and investor-owned utilities. Other preconditions advocated are: (1) a requirement that the utility offer its wholesale customers access to transmission service at cost-based rates, and during the transition to generation autonomy, offer partial requirements service as well, and (2) a requirement that the utility offer its customers meaningful access to any regional power pool of which it is a member.

With respect to pollution control and conversion devices, the Commission has already determined that CWIP associated with such devices should be included in rate base for the reasons set forth in Order No. 555 and there is no need for the utility to show further evidence of financial benefit for inclusion of such items. With respect to other CWIP for electric utilities, the Commission will, of course, consider all relevant aspects of financial need of the utility, including alternate sources of capital. However, we are not convinced based upon the record in this proceeding that a utility should be required to seek cooperative financing from an investor-owned or a publicly-owned utility prior to receiving CWIP in rate base related to items other than pollution control and conversion devices. With regard to the proposed requirements that a utility offer transmission service to its wholesale customers, we are not convinced that we can do indirectly what the U.S. Supreme Court has indicated this Commission may not do directly.[3] With respect to the partial requirements service and regional power pool suggestions, we find that these considerations may be appropriate in a general investigation of alleged anti-competitive practices, but certainly are not relevant to the question of whether or not certain CWIP should be included in rate base.

Public Systems attacks the statement in Order No. 555 that CWIP associated with pollution control and conversion devices should be accorded rate base treatment because of the current generation's commitment to the control of pollution and the profligacy of the present generation. They argue this puts too much of a financial burden on present ratepayers to require them to pay to correct mistakes of past generations, as well as to provide benefits for future generations. These arguments are unpersuasive. As we found in Order No. 555, the benefits of pollution control and conversion devices to the present generation are sufficient to warrant inclusion of CWIP in rate base at the present time.

Finally, Public Systems argues that if CWIP for pollution control devices is to be permitted (which they oppose), it should be limited to retrofit devices so as to eliminate alleged problems of definition as propounded in Commissioner Smith's concurring statement in Order No. 555. The Commission concludes that whatever problems of definition with respect to certain pollution control devices exist can be handled on a case-by-case basis and do not outweigh the reasons given for allowing the scope of CWIP set forth in Order No. 555.

The Regulated Group and others urge inclusion of all CWIP in rate base by arguing, inter alia, that long-term costs to ratepayers are cheaper, that there is still a need for more financing for future plants, and that it will be difficult to distinguish pollution control devices, at least on new plants, from the remainder of new plant. As indicated previously, definition problems will be handled on a case-by-case basis. The other arguments were raised and discussed in Order No. 555 and need no further consideration in this order.

Regulated Group, Georgia Power, and PG&E argue that the Commission's "prospective only" treatment for CWIP suspension permitted by section 205 of pollution control and conversion is in reality an extension of the five-month suspensioin permitted by section 205 of the Federal Power Act and, therefore, probably illegal. They also argue that it is bad policy because it would provide relief too late to help a utility because of regulatory delays.

In considering the proper treatment for CWIP for electric utilities, the Commission made the basic determination that only CWIP associated with pollution control and conversion devices should be included in rate base in all cases. With respect to the remaining CWIP for electric utilities, the Commission determined in general that such CWIP should not receive rate base treatment. However, the Commission also noted that there might be special cases in rare instances where, because of extreme financial hardship, it would be in the public interest to permit an electric utility to receive rate base treatment for CWIP not related to pollution control or conversion devices. Therefore, the Commission established what is, in effect, a special relief provision as an exception to the general rule prohibiting rate base treatment for such CWIP. In view of the Commission's finding that such relief would be granted only in the most extraordinary of circumstances, it is appropriate that such relief be prospective only. Otherwise the utility's ratepayers might routinely be burdened with the carrying charges associated with such claimed CWIP during the period of the Commission hearing, even though, in most instances, the claim would be rejected. The Commission notes that this procedure has been followed

[1] A coalition of publicly-owned municipals and REA cooperatives.

[2] A group of privately-owned utilities.

[3] *Otter Tail Power Co.* v. *U.S.*, 410 U.S. 366 (1973).

[4] See Opinion No. 749, —— FPC ——, issued December 31, 1975, in Docket No. R-478 (mimeo, p. 54, subparagraph (h)); Opinion No. 699-H, 52 FPC 1654 (1974) (subparagraph (g)).

in its producer rate special relief provisions.[4] Accordingly, the Commission shall deny rehearing on this issue.

The Regulated Group argues for an expanded definition for pollution control devices to include, inter alia, extra generating capacity required by pollution control devices. MP&L argues for changing the effective date of the rulemaking to cover electric rate cases pending before the Commission where CWIP was requested in the original evidentiary case. Again, the Commission finds that these arguments were covered adequately in Order No. 555 and need not be discussed further herein.

PG&E and So-Cal argue for extension of the rulemaking to natural gas pipelines either in whole or in part. They generally question the soundness of the Commission's rationale for excluding pipelines from the purview of Order No. 555 (mimeo, p. 8). We have carefully reviewed the arguments raised by petitioners, our discussion in Order No. 555, as well as the entire record herein, and find no basis for modifying Order No. 555 as requested by petitioners, and accordingly affirm our findings in Order No. 555 on this issue.

WATT, Commissioner, *dissenting*:

I am disappointed that reconsideration was not granted in order to allow the phasing in of rate base treatment for all construction work in progress.

JAMES G. WATT,
Commissioner.

[FR Doc.77-1282 Filed 1-13-77;8:45 am]

FEDERAL RESERVE SYSTEM

[H.2, 1976 No. 52]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending December 25, 1976

ACTIONS OF THE BOARD

Publication for public comment proposed sample forms and instructions that could be used by lessors to comply with the Board's regulations implementing the Consumer Leasing Act.

Forms F.R. Y-6 and F.R. Y-6 Supplement, revisions of the Bank Holding Company Annual Report, effective with reporting of year-end 1976 data.

C.I.T. Financial Corporation, New York, New York, the Board announced that C.I.T. is entitled to grandfather privileges for some but not all of the nonbank activities in which it currently engages; the determination was made under the 1970 amendments to the Bank Holding Company Act.

SWB Corporation, Oklahoma City, Oklahoma, extension of time to February 20, 1977, within which to consummate acquisition of Southwestern Bank and Trust Company, Oklahoma City, Oklahoma.[1]

Citibank, N.A., New York, New York, extension of time within which it may acquire and hold up to 40 percent of Bank of Lebanon and Kuwait S.A.R. Beirut, Lebanon.[1]

Jackson State Bank, Jackson, Wyoming, extension of time to April 30, 1977, within which to complete the sale of subordinated capital notes.[1]

Boston Leasing, GmbH, Frankfurt, Federal Republic of Germany, proposed merger by The First National Bank of Boston, Boston, Massachusetts, report to the Federal Deposit Insurance Corporation on competitive factors.[1]

First National Bank of Youngwood, Youngwood, Pennsylvania, proposed acquisition by Gallatin National Bank, Uniontown, Pennsylvania, report to the Comptroller of the Currency on competitive factors.[1]

Nacogdoches Road Bank, San Antonio, Texas, proposed merger with Northern Hills Bank of San Antonio, San Antonio, Texas, report to the Federal Deposit Insurance Corporation on competitive factors.[1]

Subsidiaries of Sun Banks of Florida, Inc., Orlando, Florida, proposed merger with Sun First National Bank of Orlando, Orlando, Florida, report to the Comptroller of the Currency on competitive factors.[1]

To establish a domestic branch pursuant to section 9 of the Federal Reserve Act.

APPROVED

Union Trust Company of Maryland, Baltimore, Maryland. Branch to be established at the intersection of Democracy Boulevard and Fernwood Road, Bethesda, Montgomery County.[2]

Bloomfield State Bank, Bloomfield, Indiana. Branch to be established at 315 East Main Street, Jasonville, Greene County.[2]

* * * * *

International Investments and other actions pursuant to sections 25 and 25(a) of the Federal Reserve Act and sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Federal Deposit Insurance Corporation—for the First National Bank of Boston: to acquire the assets and assume liability to pay deposits made in Boston Leasing, G.m.b.H., Frankfurt, Federal Republic of Germany.

BankAmerica Corporation: Investment—reorganization and merger of Luxembourg Subsidiaries.

* * * * *

To form a bank holding company pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956.

SUSPENDED

Sheldon Security Bancorporation, Inc., Sheldon, Iowa, for approval to acquire 27.70 per cent of the voting shares of Security State Bank, Sheldon, Iowa.

APPROVED

First Security Corporation, Harrison, Arkansas, for approval to acquire 98.4 per cent of the voting shares of The Security Bank, Harrison, Arkansas.[2]

First National Bancshares of Dodge City, Inc., Dodge City, Kansas, for approval to acquire 87.4 per cent of the voting shares of First National Bank in Dodge City, Dodge City, Kansas.[2]

Scribner Banshares, Inc., Scribner, Nebraska, for approval to acquire 96.1 per cent or more of the voting shares of Scribner Bank, Scribner, Nebraska.

* * * * *

To expand a bank holding company pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956.

APPROVED

Falsbuilding, Inc., Columbia Falls, Montana, for approval to acquire an additional 18.7 per cent of the voting shares of Bank of Columbia Falls, Columbia Falls, Montana.

Freeco, Inc., Hermitage, Missouri, for approval to retain 1,956 of the voting shares of The Bank of Hermitage, Hermitage, Missouri.

* * * * *

To expand a bank holding company pursuant to section 3(a)(5) of the Bank Holding Company Act of 1956.

APPROVED

Ameribanc, Inc., St. Joseph, Missouri, for approval to merge with Consolidated Bancshares of Missouri, Inc., St. Joseph, Missouri.[2]

To expand a bank holding company pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956.

RETURNED

Otto Bremer Company and Otto Bremer Foundation, St. Paul, Minnesota, notification of intent to engage in *de novo* activities (providing certain investment financial or economic information and advice) at 1300 Northern Federal Building, 385 North Wabasha Street, St. Paul, Minnesota, through a subsidiary, Bremer Service Company, Inc. (12/20/76) [3]

Scribner Banshares, Inc., Scribner, Nebraska, for approval to continue to engage in general insurance agency activities through Scribner Insurance Agency, Scribner, Nebraska.

DELAYED

Sheldon Security Bancorporation, Inc., Sheldon, Iowa, for approval to acquire the shares of Richard A. Schneider Agency and Security Agency, both in Sheldon, Iowa.

Metro Bancshares, Inc. Kansas City, Missouri, notification of intent to engage in de novo activities (leasing personal property or acting as agent, broker, or adviser in leasing such property provided all leases are to serve as the functional equivalent of an extension of credit to the lessee of the property; the leased property is to be acquired specifically for the leasing transaction under consideration or will have been acquired for an earlier leasing transaction; all leases are on a non-operating basis and at the inception of the initial lease the effect of the transaction will yield a return than will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the terms of the lease; the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; at the expiration of the lease all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease; however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property) at Metro North State Bank, 221 N.E. Barry Road, Kansas City, Missouri (12/23/76) [3]

PERMITTED

CB&T Bancshares, Inc., Columbus, Georgia, notification of intent to relocate de novo activities (making or acquiring, for its own account or for the account of others,

[1] Application processed on behalf of the Board of Governors under delegated authority.

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

loans and other extensions of credit such as would be made by a first mortgage company; and writing and issuing mortgage cancellation insurance and credit accident and health insurance in connection with the extension of credit such as would be made by a first mortgage company) from 1501 Thirteenth Street, Columbus, Georgia to 5670 Whitesville Road, Columbus, Georgia, through its subsidiary, The Georgia Company of America. (12/19/76) [3]

Colorado National Bankshares, Inc., Denver, Colorado, notification of intent to engage in de novo activities (acting as insurance agent or broker with respect to reducing term credit life insurance and credit accident and health insurance in connection with amortized loans and consumer installment loans and also with respect to level term credit life insurance and credit accident and health insurance in connection with single payment loans made by Colorado National Bankshares, Inc. and its subsidiaries) at First National Bank of Sterling, Sterling, Colorado; Weld Colorado Bank, Greeley, Colorado; Golden State Bank, Golden, Colorado; First National Bank, Evergreen, Colorado; Aspen Industrial Bank, Aspen, Colorado; and Northglenn Industrial Bank, Northglenn, Colorado; through a subsidiary, Colorado National Insurance Agency, Inc. (12/24/76) [3]

* * * * *

To expand a bank holding company pursuant to section 4(c)(12) of the Bank Holding Company Act of 1956.

PERMITTED

Helmerich & Payne, Inc., Tulsa, Oklahoma, notification of intent to acquire from time to time shares of the common voting stock of Mid-Western Nurseries, Inc., Tahlequah, Oklahoma. (12/23/76) [3]

APPLICATIONS RECEIVED

To establish a domestic branch pursuant to section 9 of the Federal Reserve Act.

The Merrill Trust Company, Bangor, Maine. Branch to be established on Route 1 at Maine Street, Woodland.

International State Bank, Raton, New Mexico. Branch to be established in the 1300 block of South Second Street, Raton.

* * * * *

To become a member of the Federal Reserve System pursuant to section 9 of the Federal Reserve Act.

Wyoming Bank of Rawlins, Rawlins, Wyoming.

* * * * *

To form a bank holding company pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956.

Audubon Investment Company, Audubon, Iowa, for approval to acquire 97.83 per cent of the voting shares of Audubon State Bank, Audubon, Iowa.

Dunn Shares, Inc., Eagle Grove, Iowa, for approval to acquire 51.33 per cent or more of the voting shares of Security Savings Bank, Eagle Grove, Iowa.

Kruse Insurance Agency, Inc., Mineola, Iowa, for approval to acquire 80 per cent or more of the voting shares of Mineola State Bank, Mineola, Iowa.

* * * * *

To expand a bank holding company pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956.

Banks of Iowa, Inc., Cedar Rapids, Iowa, for approval to acquire 80 per cent or more of the voting shares of First Trust and Savings Bank, Davenport, Iowa.

Michigan National Corporation, Bloomfield Hills, Michigan, for approval to acquire 100 percent of the voting shares (less directors' qualifying shares) of Michigan National Bank—Farmington, Farmington Hills, Michigan, a proposed new bank.

Peoples Banking Corporation, Bay City, Michigan, for approval to acquide 100 percent of the voting shares (less directors' qualifying shares) of the successor by consolidation to The First National Bank of Lapeer, Lapeer, Michigan.

First International Bancshares, Inc., Dallas, Texas, for approval to acquire 100 percent of the voting shares (less directors' qualifying shares) of Beaumont State Bank, Beaumont, Texas.

Republic of Texas Corporation, Dallas, Texas, for approval to acquire 100 percent of the voting shares (less directors' qualifying shares) of First National Bank in Garland, Garland, Texas.

* * * * *

To expand a bank holding company pursuant to section 3(a)(5) of the Bank Holding Company Act of 1956.

Texas Commerce Bancshares, Inc., Houston, Texas, for approval to merge with The Bancapital Financial Corporation, Austin, Texas.

* * * * *

To expand a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

United Penn Corporation, Wilkes-Barre, Pennsylvania, notification of intent to engage in de novo activities (making loans under the Pennsylvania Consumer Discount Company Act up to $5,000; and the sale of insurance (life, health and disability insurance) which is directly related to such consumer loans) at 69 North Market Street, Nanticoke, Pennsylvania, through its subsidiary, Valley Consumer Discount Company. (12/17/76) [3]

Pittsburgh National Corporation, Pittsburgh, Pennsylvania, notification of intent to engage in de novo activities (mortgage banking including the making, acquiring and servicing for its own account or the account of others, loans and other extensions of credit) at Suite 256, Park Elm Office Center, 1451 Elm Hill Pike, Nashville, Tennessee, through its wholly-owned subsidiary, The Kissell Company, Springfield, Ohio (12/22/76) [3]

United Virginia Bankshares Incorporated, Richmond, Virginia, notification of intent to engage in de novo activities (leasing personal property and equipment and, in connection with such activity, making extensions of credit through conditional sales contracts and acting as agent, broker, or adviser in leasing such property under such circumstances and making loans and other extensions of credit by financing installment sales agreements, making loans and other extensions of credit secured by a security interest in personal property and equipment, and purchasing and selling leases of and installment sales agreements and debt obligations relating to personal property and equipment all as would be done by a commercial finance company) at 900 East Main Street, Richmond, Virginia, through its subsidiary, United Virginia Leasing Corporation (12/20/76) [3]

Kruse Insurance Agency, Inc., Mineola, Iowa, for approval to retain credit and service related insurance agency business of Kruse Insurance Agency, Inc., Mineola, Iowa.

Binger Agency Inc., Binger, Oklahoma, notification of intent to engage in de novo activities (the activities of provision of bookkeeping and data processing services and processing other banking, financial, or related financial data on a fee contract basis to businesses, bank, and individuals) at 101 West Main Street, Hinton, Oklahoma, through a subsidiary, Binger Agency Data Processing Center (12/20/76) [3]

To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

Heights Finance Corporation, Peoria, Illinois, notification of intent to acquire all of the outstanding shares of capital stock of Mid American Credit, Inc., a consumer finance corporation with offices in Canton, Havana, Beardstown, and Macombe, all in Illinois (12/23/76) [3]

* * * * *

REPORTS RECEIVED

Proxy Statement (Special Meeting) Filed Pursuant to Section 14(a) of the Securities Exchange Act.

The Union Bank & Savings Company, Bellevue, Ohio.

* * * * *

Ownership Statement Filed Pursuant to section 13(d) of the Securities Exchange Act.

Bank of the Commonwealth, Detroit, Michigan (Filed by Ghaith Pharaon—Amendment No. 4).

* * * * *

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, January 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1266 Filed 1-13-77;8:45 am]

AUDUBON INVESTMENT CO.

Formation of Bank Holding Company

Audubon Investment Company, Audubon, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 97.83 percent or more of the voting shares of Audubon State Bank, Audubon, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. 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 no later than February 4, 1977.

Board of Governors of the Federal Reserve System, January 6, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1219 Filed 1-13-77;8:45 am]

DUNN SHARES, INC.

Formation of Bank Holding Company

Dunn Shares, Inc., Eagle Grove, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 51.33 percent or more of the voting shares of Security Savings Bank, Eagle Grove, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 31, 1977.

Board of Governors of the Federal Reserve System, January 7, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1216 Filed 1-13-77;8:45 am]

NORTHWEST ARKANSAS BANCSHARES, INC.

Formation of Bank Holding Company

Northwest Arkansas Bancshares, Inc., Bentonville, Arkansas, has amended its application for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent (less directors' qualifying shares) of the voting shares of First National Bank, Rogers, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The amended application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. 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 no later than February 4, 1977.

Board of Governors of the Federal Reserve System, January 6, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1218 Filed 1-13-77;8:45 am]

REPUBLIC OF TEXAS CORP.

Acquisition of Bank

Republic of Texas Corporation, Dallas, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to retain 21.19 percent and acquire an additional 78.81 percent (less directors' qualifying shares) of the voting shares of First National Bank in Garland, Garland, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 4, 1977.

Board of Governors of the Federal Reserve System, January 6, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1212 Filed 1-13-77;8:45 am]

REPUBLIC OF TEXAC CORP.

Acquisition of Bank

Republic of Texas Corporation, Dallas, Texas, has applied for the Board's approval under section 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 Dallas National Bank in Dallas, Dallas, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 7, 1977.

Board of Governors of the Federal Reserve System, January 7, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1215 Filed 1-13-77;8:45 am]

ROYAL TRUST BANK CORP.

Order Approving Acquisition of Banks

Royal Trust Bank Corp., Miami, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 51 percent or more of the voting shares of Royal Trust Bank of St. Petersburg, Gulfport, Florida ("Gulfport Bank") and of Royal Trust Bank of Tampa, Tampa, Florida ("Tampa Bank").

Notice of the applications affording opportunity for interested persons to submit comments and views has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and this Federal Reserve Bank has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the twenty-eighth largest banking organization in Florida, controls two banks which have deposits of $107 million, or less than one percent of deposits in all commercial banks of the state. (All banking data are as of December 31, 1975, and reflect acquisitions and formations through December 1, 1976.) Acquisition of Gulfport Bank, with deposits of $22.1 million, and Tampa Bank, with deposits of $6.1 million, would increase Applicant's share of Florida commercial bank deposits by less than one percent. No undue concentration of banking resources in Florida would result.

The purpose of the proposed transaction is to effect a transfer of direct ownership of Gulfport Bank and Tampa Bank from The Royal Trust Company, Montreal, Quebec, Canada ("Royal Trust"), to Applicant, a wholly owned subsidiary of Royal Trust. Gulfport Bank, with 1.6 percent of deposits held by the 18 banking organizations in the relevant St. Petersburg market area (Pinellas County, south of Largo), is the 16th largest banking organization in its area; Tampa Bank, with 0.35 percent of deposits held by 26 banking organizations in the adjoining Tampa market area (Hillsborough County plus Land o'Lakes in Pasco County) is the 23rd largest banking organization in its area. Consummation of the proposal would not eliminate existing or future competition, nor have an adverse effect on other area banks.

The financial and managerial resources of Applicant, dependent upon those of its subsidiary banks and Royal Trust, are considered to be satisfactory. Banking factors are consistent with approval of the applications.

The proposed acquisitions represent a change in the direct ownership of Gulfport Bank and Tampa Bank, and there are no significant proposed changes in the operation or services of the banks to be acquired.

Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the applications.

It is this Federal Reserve Bank's judgment that consummation of the proposed acquisitions is in the public interest and that the acquisition should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transaction shall not be completed (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after that date, unless the period described in (b) is extended for good cause by the Board, or by this Federal Reserve Bank pursuant to delegated authority.

By order of the Federal Reserve Bank of Atlanta acting under delegated authority for the Board of Governors of

the Federal Reserve System, effective December 29, 1976.

ARTHUR H. KANTNER,
Senior Vice President.

[FR Doc.77-1213 Filed 1-13-77;8:45 am]

SOUTHEAST BANKING CORP., EXCHANGE BANCORPORATION, INC.

Order Approving Acquisition of Banks

Southeast Banking Corporation, Miami, Florida ("Southeast"), a bank holding company within the meaning of the Bank Holding Company Act ("Act"), has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. § 1842(a)(3)) to acquire 80 percent or more of the voting shares of (1) The Exchange Bank of North Winter Haven, Winter Haven, Florida ("Winter Haven Bank"); and (2) The Exchange Bank of Westshore, Tampa, Florida ("Westshore Bank"), both of which are presently controlled by Exchange Bancorporation, Inc., Tampa, Florida ("Exchange"). Southeast proposes to acquire Winter Haven Bank through its wholly-owned subsidiary, Southeast Acquisition Company.

At the same time, Exchange, a bank holding company within the meaning of the Act, has applied for the Board's prior approval under § 3(a)(3) of the Act to acquire 80 percent or more of the voting shares of (1) Southeast Bank of Gulf Gate, Sarasota, Florida ("Gulf Gate Bank"); and (2) Southeast National Bank of Manatee, Bradenton, Florida ("Manatee Bank"), both of which are presently controlled by Southeast.[1]

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

APPLICATIONS OF SOUTHEAST

Southeast, the largest banking organization in Florida, controls 47 banks with aggregate deposits of approximately $2.7 billion, representing 10.7 percent of the total deposits in commercial banks in the State.[2] Acquisition of Winter Haven Bank and Westshore Bank would not significantly increase Southeast's share of State deposits, nor would it alter Southeast's ranking among other State banking organizations. Approval of the subject applications to acquire Winter Haven Bank and Westshore Bank would not result in a significant increase in the concentration of banking resources in Florida.

Winter Haven Bank holds deposits of approximately $5.2 million, representing 1.6 percent of the total deposits in commercial banks in the East Polk County banking market,[3] and ranks as the 13th largest of 15 banks operating in that market. The three largest banking organizations operating in this market control approximately 69 percent of the market's commercial bank deposits. Exchange is the largest banking organization in the market, controlling 31.6 percent of total deposits in commercial banks in the market. The office of Applicant's subsidiary bank closest to Winter Haven Bank is located approximately 43 miles away in a separate banking market. It appears from the record that no meaningful competition presently exists between Southeast's subsidiaries, both bank and nonbank, and Winter Haven Bank. On the other hand, acquisition of Winter Haven Bank by Southeast should have some positive effects on competition by reducing the concentration of banking resources controlled by the market's largest banking organization and introducing an additional competitor.

Westshore Bank holds deposits of approximately $7.4 million, representing 0.4 pecent of the total deposits in commercial banks in the Tampa banking market,[4] and ranks as the 31st largest of 43 banks in the market. The three largest banking organizations in the market control more than 59 percent of total commercial bank deposits in the market. Southeast currently controls one subsidiary bank in the Tampa market, which holds deposits of approximately $26 million, representing 1.5 percent of the market's total deposits, and ranks as the market's 19th largest bank. Although consummation of Southeast's proposal to acquire Westshore Bank would eliminate some existing competition, the Board believes that on balance, the proposal should have a positive effect on competition in the Tamapa banking market. In view of the relatively small size of both Westshore Bank and Southeast's present subsidiary bank in the market and the number of competing banks in the market, the existing competition that would be eliminated would be insignificant in relation to the market. Furthermore, the amount of competition existing between Southeast's mortgage banking subsidiary and Westshore Bank is also considered insignificant. However, the acquisition of Westshore Bank by Southeast would decrease slightly the level of concentration of banking resources controlled by the market's largest holding companies.

On the basis of the foregoing, the Board concludes that consummation of Southeast's proposals to acquire Winter Haven Bank and Westshore Bank from Exchange would not have any significant adverse effects on existing or potential competition in any relevant area, and that competitive considerations are consistent with approval of the applications.

With respect to the financial and managerial resources of Southeast and its subsidiaries, the Board denied an application by Southeast to acquire another bank in March of last year on the basis that Southeast should not divert any of its financial or managerial resources from its existing subsidiaries for purposes of making an acquisition.[5] However, the subject proposal is to be accomplished through an exchange of shares without any cash outlay or increased indebtedness and the two subject banks would not divert Applicant's attention or resources from its present subsidiaries because of the generally satisfactory financial and managerial resources of the two banks. Therefore, the Board concludes that the banking factors are consistent with approval of the applications.

Southeast proposes to generally expand and improve the services currently available to customers of the two banks; thus, considerations relating to the convenience and needs of the communities to be served are consistent with approval of the applications. Accordingly, it is the Board's judgment that consummation of the proposal to acquire Winter Haven Bank and Westshore Bank from Exchange would be in the public interest and that the subject applications should be approved.

APPLICATIONS OF EXCHANGE

Exchange, the 13th largest banking organization in Florida, controls 14 banks with aggregate deposits of approximately $573 million, representing 2.3 per cent of the total deposits in commercial banks in the State. Acquisition of Gulf Gate Bank and Manatee Bank would not significantly increase Exchange's share of State deposits, nor would it alter Exchange's ranking among other State banking organizations. Approval of the subject applications to acquire Gulf Gate Bank and Manatee Bank would not result in a significant increase in the concentration of banking resources in Florida.

Gulf Gate Bank holds deposits of approximately $8.5 million, representing 1.5 per cent of the total deposits in commercial banks in the Sarasota banking market,[6] and ranks as the 13th largest of 16 banks operating in the market. The three largest banking organizations

[1] Southeast and Exchange propose to accomplish the subject acquisitions through the exchange of all of the voting shares of Winter Haven Bank and Westshore Bank now held by Exchange for all of the voting shares of Gulf Gate Bank and Manatee Bank now held by Southeast. In addition, Exchange would also acquire approximately 38,000 shares of the common stock of Southeast, which represents 0.3 percent of Southeast's total outstanding voting shares.

[2] All banking data are as of December 31, 1975.

[3] The East Polk County banking market, the relevant geographic market for purposes of analyzing the competitive effects of the proposal to acquire Winter Haven Bank, is approximated by the eastern half of Polk County, Florida.

[4] The Tamapa banking market is approximated by all of Hillsborough County and the Land O'Lakes area of Pasco County, all in Florida.

[5] Board Order dated March 16, 1976, denying the application of Southeast to acquire Worth Avenue National Bank, Palm Beach, Florida. In addition, on November 17, 1975, the Board approved the acquisition by Southeast of the financially troubled Palmer Bank Corporation and its subsidiaries, all of Sarasota, Florida.

[6] The Sarasota banking market is approximated by the northern portion of Sarasota County and the extreme southern portion of Manatee County, all in Florida.

in the market control approximately 86 per cent of the market's total deposits. Southeast is the second largest banking organization in the market controlling more than one-third of the market's deposits. The office of a subsidiary bank of Exchange closest to Gulf Gate Bank is located approximately 60 road miles away in a separate banking market. It appears that there is no meaningful competition presently existing between any of Exchange's subsidiary banks and Gulf Gate Bank. Although Exchange could enter this market on a de novo basis, the subject proposal would have a positive effect on competition by reducing slightly the concentration of banking resources held by the market's second largest banking organization and providing a foothold entry for a new competitor in the market without eliminating any independent banks that could be acquired by other potential entrants in the future.

Manatee Bank holds deposits of approximately $3.5 million, representing 0.9 per cent of the total deposits in commercial banks in the Bradenton banking market,[1] and ranks as the 9th largest of 12 banks operating in the market. The three largest banking organizations in the market control approximately 64 per cent of the market's total deposits. Southeast is the second largest banking organization in the market controlling almost 22 per cent of total market deposits. The office of a subsidiary bank of Exchange closest to Manatee Bank is located approximately 45 road miles away in a separate banking market. It appears that no meaningful competition presently exists between any of Exchange's subsidiary banks and Manatee Bank. Again, the acquisition of Manatee Bank from Southeast should have positive effects on competition in the Bradenton market by slightly decreasing the concentration of resources held by the market's second largest banking organization and introducing an alternative source of banking services without eliminating any independent banks that could be acquired by potential entrants to the market in the future.

The financial and managerial resources of Exchange, its subsidiaries, Gulf Gate Bank and Manatee Bank are considered generally satisfactory and the future prospects for each appear favorable. Thus, the banking factors are consistent with approval of the applications.

Exchange proposes to offer specialized loan services to customers of Gulf Gate Bank and Manatee Bank. In addition, Exchange plans to provide both banks with staff training and management development programs. Considerations relating to the convenience and needs of the communities to be served are consistent with approval of the applications. It is the Board's judgment that consummation of the proposed acquisition of Gulf Gate Bank and Manatee Bank from Southeast would be in the public interest and that the applications should be approved.

It should be emphasized that the Board will scrutinize with special care any proposal that involves the exchange of bank subsidiaries between bank holding companies. Furthermore, the Board will only approve such a proposal if it would have a positive competitive effect, as is present in the instant proposals, or a beneficial effect upon the convenience and needs of the communities to be served sufficient to clearly outweigh any possible anticompetitive effects. Accordingly, on the basis of the record, the subject applications are approved for the reasons summarized above. The transactions shall not be made (a) before the thirtieth calendar day following the effective date of this Order, or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] effective January 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1267 Filed 1-13-77;8:45 am]

[1] The Bradenton manking market is approximated by all of Manatee County, Florida, excepting the extreme southern portion.

[2] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Partee and Lilly. Absent and not voting: Chairman Burns and Governor Jackson.

TEXAS COMMERCE BANCSHARES, INC.

Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with The Ban-Capital Financial Corporation, Austin, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. 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 February 7, 1977.

Board of Governors of the Federal Reserve System, January 7, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1214 Filed 1-13-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 772 3015]

BRYSON IMPLEMENT CO., ET AL.

Consent Agreement With Analysis to Aid Public Comment

Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, 40 FR 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 14, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14), 40 FR 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580

[File No. 772 3015]

BRYSON IMPLEMENT COMPANY ET AL

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Bryson Implement Company, Inc., a corporation, and Herbert M. Bryson, Jr., individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Bryson Implement Company, Inc., a corporation, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the practices being investigated:

It is hereby agreed by and between Bryson Implement Company, Inc., a corporation, by its duly authorized officer, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Bryson Implement Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at Main Street, Samson, Alabama 36477.

Proposed respondent Herbert M. Bryson, Jr., is an officer of the proposed corporate respondent. He formulates, directs and controls the acts and practices of the proposed corporate respondent, and his address is the same as that of the said proposed corporate respondent.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. Thereafter, the Commission may withdraw its acceptance if comments or views submitted to the Commission within the aforesaid sixty (60) day period disclose facts

or considerations which indicate that the order contained in the agreement is inappropriate, improper or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereo. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to-order to proposed respondents' address stated in the agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondents Bryson Implement Company, Inc., a corporation, its successors and assigns, and its officers, and Herbert M. Bryson, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of, or arrangement to extend, consumer credit or any advertisement to aid, promote or assist, directly or indirectly, any extension of, or arrangement to extend, consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (15 U.S.C. 1601–65 (1970), as amended, 15 U.S.C. 1601–64(a), (Supp. IV, 1974)) do forthwith cease and desist from:

1. Failing to give to each customer all of the cost of credit information required by § 226.8 of Regulation Z prior to the consummation of the sale, as required by § 226.8(a) of Regulation Z;

2. Failing to disclose the finance charge expressed as an annual percentage rate, using the term "annual percentage rate," as required by § 226.8(b)(2) of Regulation Z;

3. Failing to disclose the sum of the payments scheduled to repay the indebtedness and to describe that sum as the "total of payments," as required by § 226.8 (b)(3) of Regulation Z;

4. Failing to disclose the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments, as required by § 226.8(b)(4) of Regulation Z;

5. Failing, in conjunction with the description or identification of the type of any security interest held, retained or acquired, to clearly set forth such description on the same side of the page and above or adjacent to the price for the customer's signature on the contract or on one side of a separate statement which identifies the transaction, as required by § 226.8(a)(1) and (2) of Regulation Z;

6. Failing, in conjunction with the description or identification of the type of any security interest held or to be retained or acquired, to clearly set forth that future indebtedness is secured by the property in which the security interest is retained, as required by § 226.8(b)(5) of Regulation Z;

7. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by § 226.8(b)(7) of Regulation Z;

8. Failing to use the term "cash price" to describe the price at which respondents offer, in their regular course of business, to sell for cash the equipment which is the subject of the credit sale, as required by § 226.8(c)(1) of Regulation Z;

9. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by § 226.8(c)(2) of Regulation Z;

10. Failing to use the term "trade-in" to describe any downpayment in property made in connection with the credit sale, as required by § 226.8(c)(2) of Regulation Z;

11. Failing to use the term "total downpayment" to describe the sum of the "cash downpayment" and the "trade-in," as required by § 226.8(c)(2) of Regulation Z;

12. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by § 226.8(c)(3) of Regulation Z;

13. Failing to disclose all other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge, as required by § 226.8 (c)(4) of Regulation Z;

14. Failing to disclose the sum of the "unpaid balance of the cash price" and all other charges individually itemized which are included in the amount financed but which are not part of the finance charge and to describe that sum as the "unpaid balance," as required by § 226.8(c)(5) of Regulation Z;

15. Failing to use the term "amount financed" to describe the amount of credit extended, as required by § 226.8(c)(7) of Regulation Z;

16. Failing to use the term "finance charge" to describe the sum of all charges required by § 226.4 of Regulation Z to be included therein, as required by § 226.8(c)(8)(i) of Regulation Z;

17. Failing to disclose the sum of the cash price, all other charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by § 226.8(c)(8)(ii) of Regulation Z;

18. Failing to include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connecion with any credit transaction unless

(i) The insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) Any customer desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance, as required by § 226.4(a)(5) of Regulation Z;

19. Failing to include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained, as required by § 226.4(a)(6) of Regulation Z;

20. Failing to maintain evidence of compliance with Regulation Z for two (2) years after the date of each disclosure, as required by § 226.6(i) of Regulation Z; and

21. Failing in any consumer credit transaction or advertisement to make all disclosures that are required by §§ 226.4, 226.5, 226.6, 226.8 and 226.10 of Regulation Z in the manner, form and amount specified therein.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present or future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising and that respondents secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

BRYSON IMPLEMENT COMPANY, INC.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Bryon Implement Company, Inc., and Herbert M. Bryson, Jr.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Bryson Implement Company, Inc., is an Alabama corporation engaged in the marketing of farming implements and equipment and offers to arrange and arranges extensions of consumer credit as part of its marketing plan. Herbert M. Bryson, Jr., is president of the corporate respondent and controls and is responsible for its acts and practices.

The complaint in this matter alleges that in their use of standard form contracts to secure repayment by purchasers of their farming implements and equipment respondents violated the provisions of the Truth in Lending Act by failing to provide all of the cost of credit information; failing to disclose the finance charge expressed as an "annual percentage rate"; failing to disclose the sum of the payments scheduled to repay the indebtedness as the "total of payments"; failing to disclose the amount of any default or delinquency charges payable in the event of late payments; failing to clearly describe the type of any security interest acquired; failing to clearly disclose that future indebtedness is secured by the property in which the security interest is retained; failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the debt; failing to use the term "cash price" to describe the price at which respondents offer to sell their merchandise for cash; failing to use the term "cash downpayment" to describe the downpayment made in money; failing to use the term "trade-in" to describe any downpayment made in property; failing to use the term "total downpayment" to describe the sum of all downpayments made; failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and total downpayment; failing to disclose all charges, individually itemized, included in the amount financed but which are not part of the finance charge; failing to disclose the sum of the "unpaid balance of the cash price" and all other charges, individually itemized, included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance"; failing to use the term "amount financed" to describe the amount of credit extended; failing to use the term "finance charge" to describe the sum of all charges required to be included therein; failing to disclose the sum of the cash price, all other charges which are included in the amount financed but which are not part of the finance charge and the finance charge, and to describe that sum as the "deferred payment price"; failing to include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connection with any credit transaction, unless the coverage is not required and such fact is clearly disclosed and unless any customer desiring such coverage gives specifically dated and separately signed affirmative written indication of such desire; failing to include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property when the customer was not given a specific written statement setting forth the cost of the insurance if obtained from or through the respondents and stating that the customer may choose the person through which the insurance is to be obtained; and failing to maintain evidence of compliance for two (2) years after the date of each disclosure.

The consent order requires the respondents in their contracts to provide all of the cost of credit information; disclose the finance charge expressed as an "annual percentage rate"; disclose the sum of the payments scheduled to repay the indebtedness as the "total of payments"; disclose the amount of any default or delinquency charges payable in the event of late payments; clearly describe the type of any security interest acquired; clearly disclose that future indebtedness is secured by the property in which the security interest is retained; identify the method of computing any unearned portion of the finance charge in the event of prepayment of the debt; use the term "cash price" to describe the price at which respondents offer to sell their merchandise for cash; use the term "cash downpayment" to describe the downpayment made in money; use the term "trade-in" to describe any downpayment made in property; use the term "total downpayment" to describe the sum of all downpayments made; use the term "unpaid balance of cash price" to describe the difference between the cash price and total downpayment; disclose all charges, individually itemized, included in the amount financed but which are not part of the finance charge; disclose the sum of the "unpaid balance of the cash price" and all other charges, individually itemized, included in the amount financed but which are not part of the finance charge, and to describe that sum as the "unpaid balance"; use the term "amount financed" to describe the amount of credit extended; use the term "finance charge" to describe the sum of all charges required to be included therein; disclose the sum of the cash price, all other charges which are included in the amount financed but which are not part of the finance charge and the finance charge, and to describe that sum as the "deferred payment price"; include in the finance charge charges or premiums for credit life, accident, health or loss of income insurance, written in connection with any credit transaction, unless the coverage is not required and such fact is clearly disclosed and unless any customer desiring such coverage gives specifically dated and separately signed affirmative written indication of such desire; include in the finance charge charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property when the customer was not given a specific written statement setting forth the cost of the insurance if obtained from or through the respondents and stating that the customer may choose the person through which the insurance is to be obtained; maintain evidence of compliance for two (2) years after the date of each disclosure; and to make all disclosures required.

The provisions of the consent order will prohibit the violations of the Truth in Lending Act and implementing Regulation Z, as amended, alleged in the complaint and will provide consumers with full and complete information concerning the cost of credit arranged by respondents.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1252 Filed 1-13-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ABBOTT LABORATORIES

Withdrawal of Food Additive Petition and Filing of Petition for Affirmation of GRAS Status

Correction

In FR Doc. 76-36751, appearing on page 55240 in the issue for Friday, December 17, 1976, the following changes should be made:

1. The last word in the seventh line of the fourth full paragraph in column three should read, "benzoic".

2. The third line of the fifth full paragraph in column three should read, "121.40) is filed by FDA. There is no pre-".

NOTE: This correction is reprinted without change from the issue of Thursday, Jan. 6, 1977.

[Docket No. 76N-0479; DESI 5963]

CERTAIN SULFONAMIDE OPHTHALMIC OINTMENTS AND SOLUTION

Drug for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

Correction

In FR Doc. 76-36750, appearing at page 55241 in the issue for Friday, December 17, 1976, make the following changes:

1. In the first column, page 55241, in the third line of the third full paragraph beginning with "NDA 7-757", the second word should read "Roche".

2. In the second column, in paragraph numbered 3, in the fifth line, "February 15, 1977", should have been inserted.

NOTE: This correction is reprinted without change from the issue of Thursday, Jan. 6, 1977.

[Docket No. 76F-0463]

BISMARK ENTERPRISE

Filing of Petition for Food Additive

Pursuant to provisions of 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 5A3079) has been filed by Bismark Enterprise, 10003 Pecos St., Denver, CO 80221 proposing that the food additive regulations (21 CFR Part 121) be amended to provide for the safe use of the following substances in flume water used to wash sugar beets: *alpha*-alkyl

(C_{10}-C_{18}-*omega*-hydroxypoly (oxyethylene), linear undecylbenzenesulfonic acid, dialkanolamide produced by condensing 1 mole of methyl laurate with 1.05 moles of diethanolamine, triethanolamine, ethylene glycol monobutyl ether, oleic acid, tetrapotassium pryophosphate, monoethanolamine, ethylene, dichloride, and tetrasodium ethylenediaminetetraacetate.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, during working hours, Monday through Friday.

Dated: December 21, 1976.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.77–1051 Filed 1–13–77;8:45 am]

[Docket No. 70–0483]

PARKE, DAVIS & CO.

Benylin Expectorant; Opportunity for Hearing on Proposal To Deny Approval of Supplemental New Drug Application

Correction

In FR Doc.76–35075, appearing at page 52537 in the issue for Tuesday, November 30, 1976, make the following changes:

1. In column one, the 13th line, "1976", should read "1977".

2. In the second column, in the 5th line from the bottom, the last word reading "diphenyldramine", should read "diphenhydramine".

3. On page 52538, third column, second full paragraph, ninth line, "1976" should read "1977".

National Institutes of Health

EPILEPSY ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Epilepsy Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, on March 22, 1977, in Room B1–19, Federal Building, Bethesda, MD 20014.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. to discuss research progress and research plans related to the Institute's epilepsy program. Attendance by the public will be limited to space available.

Dr. J. Kiffin Penry, Chief, Epilepsy Branch, Neurological Disorders Program, NINCDS, Federal Building, Room 114, NIH, Bethesda, MD 20014, telephone 301/496–6691, will provide summaries of the meeting, rosters of the committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.356, National Institutes of Health.)

Dated: January 7, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77–1263 Filed 1–13–77;8:45 am]

NUTRITION STUDY SECTION

Meeting and Workshop

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Nutrition Study Section, Division of Research Grants, February 22–25, 1977, Kenwood Country Club, Bethesda, Maryland 20034.

This meeting will be open to the public on February 22 from 7:00 p.m. to 8:00 p.m. to discuss administrative details relating to Study Section business. It will also be open on February 23 from 1:30 p.m. to adjournment for a Workshop on Nutrition and Immunology sponsored by the Study Section which will be held at the National Institutes of Health, Conference Room 4, Building 31, Bethesda, Maryland. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552(b)(4), 552(b)(5) and 552(b(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting at the Kenwood Country Club will be closed to the public on February 22 from 8:00 p.m. until adjournment, on February 23 from 8:30 a.m. to 12:00 noon and on February 24–25 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Richard Turlington, Chief, Grants Inquiries Office of the Division of Research Grants, Westwood Building, Room 448, National Institutes of Health, Bethesda, Maryland 20014, telephone 301/496–7441, will furnish summaries of the meeting and rosters of committee members. Dr. John R. Schubert, Executive Secretary, Room 204, Westward Building, Bethesda, Maryland 20014, telephone 301/496–7286, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.848, National Institutes of Health, DHEW.)

Dated: January 7, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.77–1262 Filed 1–13–77;8:45 am]

PLANNING SESSION FOR A WORKSHOP ON GENETICS-EPIDEMIOLOGY CANCER RISK ASSESSMENT METHODS

Meeting

Notice is hereby given of the "Planning Session for a Workshop on Genetics-Epidemiology Cancer Risk Assessment Methods" sponsored by the Division of Cancer Research Resources and Centers, National Cancer Institute to be held February 8, 1977, at the Landow Building, 7910 Woodmont Avenue, Conference Room C–418, Bethesda, Maryland 20014.

This meeting will be held from 8:30 A.M. to 5:00 P.M. and will be open to the public. Attendance by the public will be limited to space available.

Dr. Genrose Copley, Program Director for Epidemiology, Division of Cancer Research Resources and Centers, 5333 Westbard Avenue, Westwood Building Room 854, Bethesda, Maryland, 20016, Tel. A/C (301) 496–7805, will provide additional information.

Dated: January 10, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77–1260 Filed 1–13–77;8:45 am]

Public Health Service

COAL MINE HEALTH

Availability of Roentgenographic Interpretation Proficiency Examination

Notice is hereby given that the National Institute for Occupational Safety and Health (NIOSH) has developed, and is now prepared to administer to qualified physicians, an improved proficiency examination for roentgenographic interpreters of chest roentgenograms made under the authority of section 203(a) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 843(a)) and Part 37 of Title 42, Code of Federal Regulations.

Section 37.50 of the regulations provides that only phsicians who regularly read chest roentgenograms and who have demonstrated proficiency in applying the ILO–U/C 1971 International Classification of Radiographs of the Pneumoconioses shall be permitted to participate in the program, and that all interpreters, whenever interpreting chest roentgenograms made under the cited Act, shall have immediately available for reference a complete set of the 21 standard reference films for the ILO–U/C system obtainable from the International Labour Office in Geneva, Switzerland.

Section 37.51(b) of the regulations provides an opportunity for physicians who regularly interpret chest roentgenograms for pneumoconiosis to establish, by means of a proficiency examination, their ability to make such interpretations with a high degree of reliability. Persons who take and pass this examination which was developed and is graded by The Johns Hopkins University, are described in the regulation as "Final or 'B' readers."

The Johns Hopkins University, under the sponsorship of NIOSH, has developed an improved, more inclusive, proficiency examination covering the entire ILO–U/C system and film quality. NIOSH is presently developing proposed amendments to 42 CFR Part 37 which are expected to require reexamination of all

Final or 'B' readers using the improved proficiency examination. In the interim, NIOSH is offering physicians who qualify the opportunity to take the new examination prior to its being required by the regulations. The examination will be conducted under the supervision of NIOSH and graded by The Johns Hopkins University. Those who receive a passing grade will be placed on a list of interpreters of chest roentgenograms who have successfully completed the examination. This list will be made available to coal mine operators, and to other, on request. Each participant will be sent a copy of the report from The Johns Hopkins University on his or her proficiency and any suggestions for improvement. Those who receive a passing grade will not be required to reestablish their proficiency when the regulations are amended and will receive a letter from NIOSH to that effect.

Duly licensed practitioners who wish to participate in the proficiency examination should write or telephone the Receiving Center Section of the Appalachian Laboratory for Occupational Safety and Health, P.O. Box 4258, Morgantown, WV 26505, telephone: (304) 599-7301, for a copy of an application (Form CDC/NIOSH(M) 2.12) and for a copy of the "Instructions to Accompany Roentgenographic Interpreter Proficiency Examination." Upon return of an executed application, the Receiving Center will schedule the time and place for the examination which generally requires a working day to complete.

Date: January 6, 1977.

JOHN F. FINKLEA,
Director, National Institute for Occupational Safety and Health.

[FR Doc.77-1225 Filed 1-13-77;8:45 am]

Office of Education

CAREER EDUCATION PROGRAM

Notice of Correction

On January 11, 1977 the notice of closing date for receipt of applications for the Career Education Program was published (42 FR 2358). The closing date of March 10, 1977 and the postmark date of March 7, 1977 were in error. This correction notice changes the closing date for receipt of applications to March 15, 1977 and the postmark date to March 10, 1977.

Dated: January 11, 1977.

(Catalog of Federal Domestic Assistance No. 13.554, Career Education Program)

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.77-1383 Filed 1-13-77;8:45 am]

NATIONAL CENTER FOR EDUCATION STATISTICS

Comments on Collection of Information and Data Acquisition Activity

Pursuant to section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The U.S. Office of Education has proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to afford each educational agency or institution subject to a request under the proposed collection of information and data acquisition activities and their representative organizations an opportunity, during a 30-day period before transmittal to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collections of information and data acquisition activities.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activity are invited. Comments must be received on or before February 14, 1977, and should be addresed to Administrator, National Center for Educaction Statistics, Attn: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: January 10, 1977.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Assessment of the Status of Marketing of Education Materials for the Handicapped.

2. AGENCY/BUREAU/OFFICE

Office of Education, Bureau of Education for the Handicapped.

3. AGENCY FORM NUMBER

OE 550.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

"Sec. 617. (a)(1) In carrying out his duties under this part, the Commissioner shall—(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part * * *

"(C) Disseminate information, and otherwise promote the education of all handicappped children within the States * * *" (Pub. L. 94-142, 20 U.S.C. 1417)

"Each (State) plan shall * * * set forth * * * a description of programs and procedures for * * * disseminating to teachers and administrators of programs for handicapped children significant information developed from educational research, demonstration, and similar projects." (Pub. L. 94-142, 20 U.S.C. 1413)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Voluntary.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

To improve and further develop BEH's dissemination strategies for disseminating information about, and the products of, research and development activities to those involved in education for the handicapped. More specifically, BEH activities lead to numerous products in the form of media, equipment, curricula, and replicable models or techniques. The results of this study will assist BEH and the States in developing more specific strategies in the dissemination of these products to educators.

7. DATA ACQUISITION PLAN

a. Method of collection: Mail and telephone.
b. Time of collection: Early Spring 1977.
c. Frequency: Single time.

8. RESPONDENTS

a. Type: Educational Developers.
b. Number: 350 (sample).
c. Estimated Average Manhours per respondent: 1-3.
a. Type: Commercial Distributors.
b. Number: 400 (Sample).
c. Estimated Average Manhours per Respondent: 1-2.
a. Type: Educational Consumers (including LEA's).
b. Number: 800 (Sample).
c. Estimated Average Manhours Per Respondent: 1-3.

9. INFORMATION TO BE COLLECTED

Commercial Distributors

a. The characteristics of commercial suppliers of general and special educational materials (e.g., types of products).
b. The process by which a product moves from the stage of an initial idea to that of distribution.

Educational Developers

a. The categories of developers that produce marketable products of use to others in the broad field of education for the handicapped.
b. The types of products that are marketed.
c. How these products are promoted.

Educational Consumers

a. How decisions to purchase materials are made.
b. Who makes the decisions.
c. The type of information that is sought or obtained in order to carry out the decision process.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Program Memorandum—Application, Library Services and Construction Act, Titles I and III.

2. AGENCY/BUREAU/OFFICE

U.S. Office of Education/Bureau of Elementary and Secondary Education/Office of Libraries and Learning Resources.

3. AGENCY FORM NUMBER

OE 4563.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

"Any State desiring to receive a grant from its allotment for the purposes of this title for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 6, submit for that fiscal year an annual program for library services. Such program shall * * * include an extension of the long range program, taking into consideration the results of evaluations." (Pub. L. 91-600, Sec. 103; 20 U.S.C. 354)

"Any State desiring to receive a grant from its allotment for the purposes of this title for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 6, submit for

that fiscal year an annual program for inter-library cooperations. Such program shall * * * include an extension of the long-range program, taking into consideration the results of evaluations." (Pub. L. 91-600, Sec. 303; 20 U.S.C. 355e-2)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Required to obtain or maintain benefits.

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

Determination of grant eligibility.

7. DATA ACQUISITION PLAN

a. Method of collection: Mail.
b. Time of collection: Prior to beginning of fiscal year.
c. Frequency: Annually.

8. RESPONDENTS

a. Type: State Library Administrative agencies.
b. Number: Universe(56).
c. Estimated Average Manhours per response: 30.

9. INFORMATION TO BE COLLECTED

Basic State Plan Amendments.
Maintenance of Effort Certification.
Long-Range Program Amendments.
Annual Program: Name (descriptive name, Title I or III and project number);
Objectives.
Identify needs being met.
Contribution to meeting goals of Long-range Program.
Legislative priorities being met.
Characteristics of persons being served (ethnic group, age, socioeconomic status, etc.).
Dissemination potential of project (highlight unique or innovative aspects).
Geographic location, using map where appropriate.
Plan for evaluation.
Identification of public and non-public libraries, agencies, organizations and institutions involved (attach list).
Amount and sources of funds budgeted.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Amended Annual Program Plan for Fiscal Year 1978 Under Part B, Education of the Handicapped Act as amended by Pub. L. 94-142.

2. AGENCY/BUREAU/OFFICE

Department of Health, Education, and Welfare/U.S. Office of Education/Bureau of Education for the Handicapped/Division of Assistance to States.

3. AGENCY FORM NUMBER

OE 9055.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

Sections 612 (20 U.S.C. 1412) and 613 (20 U.S.C. 1413) of Pub. L. 94-142 constitute the basis of authority for this activity. These sections are quoted below in their entirety. Section 612 addresses the conditions of eligibility a state must meet in order to qualify for assistance and Section 613 deals with State Plan requirements.

"Sec. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

"(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

"(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

"(a) There is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

"(B) A free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

"(C) All children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

"(D) Policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

"(E) The amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

"(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (b) of paargraph (2) of this section.

"(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

"(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purpose of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

"(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

"(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

"Sec. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

"(1) Set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2) and 612(3);

"(2) Provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305(b)(8) of such Act (20 U.S.C. 844a(b)(8) or its successor authority, and section 122(a)(4)(B)) of the Vocational Education Act of 1963 (20 U.S.C. 1262(a)(4)(B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions under any other Federal program with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

"(3) Set forth, consistent with the purposes of this Act, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information

derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

"(4) Set forth policies and procedures to assure—

"(A) That, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

"(B) That (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

"(5) Set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

"(6) Provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

"(7) Provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

"(8) Provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

"(9) Provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

"(10) Provide consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

"(11) Provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education program), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 617; and

"(12) Provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

"(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

"(c) The Commissioner shall approve any State plan and any modification thereof which—

"(1) Is submitted by a State eligible in accordance with section 612; and

"(2) Meets the requirements of subsection (a) and subsection (b).

The Commissioner shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State."

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Required to obtain benefits

6. HOW INFORMATION TO BE COLLECTED WILL BE USED

Program Management. The State Annual Program Plan is the application submitted to the Commissioner of Education from each State desiring to receive grants under Part B of the Education for All Handicapped Children Act of 1975. The information requested is divided into three major sections: Submission statements and assurances, narrative descriptions of State policies and procedures for implementation of Pub. L. 94-142, and statistical requirements. (See 9 below for more specific details for these sections.)

The submission statements and certification by the officer of the State educational agency (SEA) authorized to submit the plan and by the State Attorney General shows: (1) The plan has been adopted by the SEA, (2) that the plan will be the basis for operation and administration of the activities to be carried out in that State as required under Part B of 94-142, (3) that the SEA has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and (4) that all plan provisions are consistent with State law (Regulations 121a.12).

The information will be used as the basis for determining (1) compliance during site visits, (2) grant eligibility for each State, and (3) the kind of technical assistance that may be needed. The information will also be used to identify State and national needs on facilities and services required to meet the full appropriate public education goal for handicapped children (Pub. L. 94-142, Sec. 613(a)(12)(A)); and to "provide to the appropriate committees of each House of Congress and to the general public * * * programmatic information * * * (Pub. L. 94-142, Sec. 618(b)(1)).

In summary, the information collected will be primarily used for determination of grant award, compliance enforcement, accountability to the Commissioner and technical assistance requirements (Sec. 613(a) and 618 of Pub. L. 94-142).

7. DATA ACQUISITION PLAN

a. Method of collection: By mail.
b. Time of collection: Spring.
c. Frequency: Annually.

8. RESPONDENTS

a. Type: State Education Agencies.
b. Number: Universe.
c. Estimated average man-hours per respondent: 120 hours.

9. INFORMATION TO BE COLLECTED

The information will be collected from the State Education Agencies in the form of (1) assurances, (2) narrative descriptions of State policies and procedures, and (3) statistical information.

Under the authority of Pub. L. 94-142, the assurance section will consist of a set of statements to be signed by an authorized official of the State Education Agency certifying that all of the assurances listed will be met within the State. No further information will be sought from the States in the area of these assurances.

The narrative description of the annual program plan requires descriptions of State policies and procedures for implementation of the Act. Under the authority of Pub. L. 94-142, each annual program plan must include policies and procedures which:

1. Insure public hearings, adequate notice of such hearings, and an opportunity for comment prior to the adoption of the annual program plan. (Sec. 612(7)(B), Reg. 121a.20).

2. Show that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education. (Sec. 612(1), Reg. 121a.21, 121a.22).

3. Describe the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. (See 612(2)(A)(iii), Reg. 121a.26).

4. Insures that each SEA and local education agency LEA shall use funds under Part B of the Act (1) to provide free appropriate public education to handicapped children who are not receiving any education, and (2) to provide free appropriate education to handicapped children within each disability with the most severe handicaps who are receiving some but not all of the special education and related services needed. (Sec. 612(3), Reg. 121a.27).

5. Insure that all handicapped children, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated. (Sec. 612(2)(c), Reg. 121a.28).

6. Show that each local educational agency in the State maintains records of the individualized education program for each handicapped child. (Sec. 612(4), Reg. 121a.30, 121a.223–121a.226).

7. Show that each State and local education agency shall provide procedural safeguards to handicapped children and their parents with respect to the provision of a free appropriate public education. (Sec. 612(5)(A), 121a.404, 121a.405, 121a.460).

8. Insure (1) that to the extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, (2) and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Sec. 612(5)(B), Reg. 121a.32, 121a.440–121a.442).

9. Insure that testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory. (Sec. 612(5)(c), Reg. 121a.33, 121a.430–121a.432).

10. Insure the development and implementation of a comprehensive system of personnel development. (Sec. 613(a)(3), Reg. 121a.262–121a.267, 121a.240).

11. Insure that provision is made for the participation of those children in the program assisted or carried out under Part B of Pub. L. 94–142 by providing for those children who are enrolled in regular or special private schools, special education and related services. (Sec. 613(a)(4)(A), Reg. 121a.41, 121a.300–121a.306).

12. Insure that a handicapped child who is placed in or referred to a private school or facility by the SEA or LEA (1) is provided special education and related services, (2) has all of the rights of a handicapped child who is served by a public agency. (Sec. 613(a)(4)(B), Reg. 121a.320–121a.324).

13. Insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted. (Sec. 613(a)(5), Reg. 121a.42).

14. Insure that the SEA does not take any final action with respect to an application submitted by a LEA before giving the LEA reasonable notice and an opportunity for a hearing. (Sec. 613(a)(8), Reg. 121a.45).

15. Include information about the State's use of EHA–B funds. (Sec. 611(b)(c)(d), Reg. 121a.49).

16. The SEA follows in insuring the SEA's and LEA's are (1) effectively implementing the procedural safeguards, and (2) using Part B funds properly and efficiently. (Sec. 612(6), Reg. 121a.35(a)(b)).

17. Include a description of direct services the SEA will provide (Sec. 614(d), Reg. 121a.49(b)).

18. The SEA follows to inform each State and local agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that State or local agency. (Sec. 612(6), Reg. 121a.36).

19. Provide for evaluation of the effectiveness of programs in meeting the educational needs of handicapped children. (Sec. 613(a)(11), Reg. 121a.47).

All of the above policies and procedures are necessary to show that the States are (1) eligible to receive a grant award, and (2) to be in compliance with Pub. L. 94–142 and Section 504 of the Rehabilitation Act of 1973.

The statistical information section of the annual program plan requires such data as the number of handicapped children (by State and disability) who require special education and related services; the number of handicapped children (by State and disability) who are and who are not receiving a free appropriate public education; the number of handicapped children (by State and disability) participating in regular educational programs, separate classes or separate schools or otherwise removed from the regular classroom; the number of handicapped children (in each State) who are and who are not receiving a free appropriate public education in public or private institutions; and the number of personnel (by disability category) employed in the education of handicapped children and the estimated number of additional personnel needed to carry out the policy established in Pub. L. 94–142. (618(b)(1)(A–F33)).

[FR Doc.77–1211 Filed 1–13–77;8:45 am]

NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS

MEETING

Pursuant to Subsection 10(a) of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the National Study Commission on Records and Documents of Federal Officials will meet on January 24, 1977 at 9:30 a.m., at the Association of the Bar of the City of New York, 42 West 44th Street, New York, N.Y.

Purpose: The Commission was established under Title II of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1698; 44 U.S.C. 3315 et seq.) to study problems involving the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials.

Agenda: The purposes of the meeting include a review of the recently concluded public hearings and panel discussions and of the research and background material produced for the Commission. Preliminary policy decisions and relevant constitutional questions will also be reviewed.

The meetings will be open to the public. Individuals are welcome to attend to the extent of available space.

Dated: January 3, 1977.

HERBERT BROWNELL,
Chairman.

[FR Doc.77–1209 Filed 1–13–77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[FDAA–3019–EM; Docket No. NFD–385]

ARKANSAS

Amendment to Notice of Emergency Declaration

Notice of Emergency for the State of Arkansas, dated December 3, 1976, is hereby amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of December 3, 1976, and to make emergency assistance available to this additional county effective the date of this amended Notice:

The County of: Van Buren.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: January 6, 1977.

WILLIAM E. CROCKETT,
Deputy Administrator, Federal Disaster Assistance Administration.

[FR Doc.77–1257 Filed 1–13–77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF OIL AND GAS LEASING

Proposed OCS Planning Schedule

Pursuant to the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1331 et seq.) and the regulations issued thereunder (43 CFR 3301.2) an Outer Continental Shelf (OCS) proposed oil and gas lease planning schedule is hereby announced by the Bureau of Land Management. This proposed schedule updates and revises the schedule issued in June 1975.

This schedule includes twenty-five sales through year-end 1980: six sales in the Gulf of Mexico OCS, three sales in the Pacific OCS, seven sales in the Atlantic OCS and nine sales in the Alaskan OCS. It proposes second sales in former frontier areas where an initial sale has been held or planned. All sales included on the schedule are subject to deletion or rescheduling.

Copies of the Proposed OCS Planning Schedule may be obtained from (1) Director, Bureau of Land Management (Attn: 130), Washington, D.C. 20240, (2) Manager, New York OCS Office, Bureau of Land Management, 6 World Trade Center, Suite 600D, New York, New York 10048, (3) Manager, Alaska OCS, Office, Bureau of Land Management, 800 A Street, P.O. Box 1159, Anchorage, Alaska 99510, (4) Manager, New Orleans OCS Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130, (5) Manager, Pacific OCS Office, Bureau of Land Management, 300 North Angeles Street, Room 7127, Los Angeles, California 90012.

CURT BERKLUND,
Director, Bureau of Land Management.

Approved: January 7, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

PROPOSED OCS PLANNING SCHEDULE

January 1977
(Revises June 1975 Schedule)

SALE AREA	1976						1977												1978												1979												1980											
	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
44 Gulf of Mexico		F		N	S																																														
Cl Cook Inlet		P			F		N	S																																											
47 Gulf of Mexico					E	P		F	N	S																																										
42 North Atlantic				E		P			F			N	S																																							
43 South Atlantic								E		P			F			N	S																																			
46 Kodiak									E		P			F			N	S																																		
45 Gulf of Mexico								T			E		P				F		N	S																															
48 Southern California	C		D					T						E		P			F		N	S																														
49 Mid-Atlantic					C			D			T						E		P			F			N	S																									
Beaufort Sea (near shore)									State - Federal Sale										1/																																			
51 Gulf of Mexico								C		D			T						E		P			F			N	S																							
53 General Pacific								C		D				T						E		P			F			N	S																					
54 S. Atlantic Blake Plateau											C		D			T					E		P			F			N	S																			
50 Beaufort Sea 2/													C		D			T					E		P			F			N	S																	
55 Northern Gulf of Alaska																C		D			T					E		P			F		N	S															
52 North Atlantic																	C		D			T					E		P			F		N	S														
56 South Atlantic																				C		D			T					E		P			F		N	S											
58 Gulf of Mexico																					C		D			T					E		P			F		N	S										
57 Bering - Norton																							C		D			T					E		P			F		N	S								
59 Mid-Atlantic																										C		D			T					E		P			F		N	S				
60 Bering Sea St George																											C		D			T					E		P			F		N	S			
61 Cook Inlet																														C		D			T					E		P			F		N	S	
62 Gulf of Mexico																															C		D			T					E		P			F		N	S
63 General Pacific																																C		D			T					E		P			F		N	S
64 Kodiak - Aleutian																																	C		D			T					E		P			F		N	S

C - Call for Nominations
D - Nominations Due
T - Announcement of Tracts
E - Draft Environmental statement
1/ State May Conduct Sale

P - Public Hearing
F - Final Environmental Statement
N - Notice of Sale
S - Sale
2/ Within 60 Feet Isobath or Technology Capability

Sales are contingent upon technology being available for exploration and development. A decision whether to hold any of the lease sales listed will not be made until completion of all necessary studies of the environmental impact and the holding of public hearings; as a result of the environmental, technical, and economic studies employed in the decision making process, a decision may, in fact, be made not to hold any sale on this schedule.

INT 3382-77

Curt Berklund
Director, Bureau of Land Management

[FR Doc.77-1194 Filed 1-13-77;8:45 am]

Office of the Secretary

[INT FES 77-2]

PROPOSED LIVESTOCK GRAZING PROGRAM FOR THE CHALLIS PLANNING UNIT, CUSTER COUNTY, IDAHO

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Department of the Interior, has prepared a final environmental statement for proposals to manage domestic livestock grazing on national resource/lands in the Challis Planning Unit in Custer County, Idaho.

The environmental statement considers the impacts of implementing allotment management plans for the control and management of domestic livestock grazing on national resource lands. The Bureau has determined that as a result of public review and comment on the environmental statement, additional data and planning are required before final decisions on implementing intensive livestock grazing in the Challis Unit are made. After necessary data is collected and planning completed, a supplemental environmental statement will be prepared.

Copies of the final environmental statement are available for inspection at the following locations:

Idaho State Office, Bureau of Land Management, Room 398, Federal Building, 550 West Fort Street, Boise, Idaho 83724.

Salmon District Office, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467.

Office of Public Affairs, Bureau of Land Management, Room 5625, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240.

Limited copies of this final environmental statement are available upon request to the Idaho State Director at the above address.

RONALD G. COLEMAN,
Assistant Secretary of the Interior.

[FR Doc.77-1205 Filed 1-13-77;8:45 a.m.]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

ADVISORY COMMITTEE ON JOINT BOARD ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Joint Board Actuarial Examinations will meet in the Continental Plaza Hotel, North Michigan at Delaware, Chicago, Illinois on January 28, 1977 at 9:00 a.m.

The purposes of the meeting are to discuss topics which may be covered by the Joint Board's examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, Section 1242(a)(1)(B), to prepare recommended questions for such examinations and to review other actuarial examinations in order to make recommendations regarding such examinations' adequacy to demonstrate the education and training in actuarial mathematics and methodology required for enrollment by Title 20 U.S. Code, Section 1242(a)(1).

A determination as required by Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in Title U.S. Code, Section 552(b)(5), and that the public interest requires such meeting be closed to public participation.

LESLIE S. SHAPIRO,
Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc.77-1259 Filed 1-13-77;8:45 am]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

INTERGOVERNMENTAL SCIENCE, ENGINEERING AND TECHNOLOGY ADVISORY PANEL

Meeting Change

The time of the Intergovernmental Science, Engineering and Technology Advisory Panel meeting, previously announced for 9:30 to 11:00 a.m., January 21, 1977, has been changed to 2:00 to 4:00 p.m., January 21, 1977. The notice of this meeting was previously published in the January 5, 1977, FEDERAL REGISTER, Volume 42, Number 3, page 1085, FR Doc. 77-376. All other information related to this meeting announcement remains as originally published.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc.77-1210 Filed 1-13-77;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is caculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D St. NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 11th day of January 1977.

BEN BURDETSKY,
Deputy Assistant Secretary for Employment and Training.

Applications received during the week ending Jan. 11, 1977

Name of applicant	Location of enterprise	Principal product or activity
Donald George McDaniels	Cape May, N.J.	Harvesting of surf clams.
Delmarva Poultry Cooperative	Laurel, Del.	Processed poultry.
Dennette Road Manor, Inc.	Mount Lake Park, Md.	Nursing home.
Cam-Flek of Virginia IQ Converting Division Inc.	Nickelsville, Va.	Manufacturing of stationery, tablets, loose-leaf fillers, and related items from purchased paper.
Emporium Specialties Co., Inc.	Austin, Pa.	Manufacturing of electronic components and related products.
Old Dominion Beef, Inc.	Jarratt, Va.	Manufacturing of beef products, edible and inedible beef byproducts and custom cattle feeding services.
The John A. McKay Manufacturing Co., Inc.	Dunn, N.C.	Manufacturing of farm machinery truck bodies, and motor truck trailers.
Braselton Packing Co. (tenant of town of Braselton).	Braselton, Ga.	Slaughter house.
Associated Properties, Inc.	St. George, S.C.	Real estate.
J. Clyde Roberson	Cookeville, Tenn.	Motel.
Herman Milton Hammock	Zebulon, N.C.	Sell and service automobiles and trucks.
Global Lagging, Inc.	Waverly, Tenn.	Production of prefabricated installation panels.
Dupont Realty	Fort Wayne, Ind.	Real estate.
Southern Health Facilities, Inc.	Wheelersburg, Ohio.	Nursing care.
Jackson Feed Co., Inc.	Jackson, Minn.	Manufacturing of livestock feed and rental farm supplies.
Robert Stanelle, Jr.	Chilton, Wis.	Sales and service of appliances, dairy equipment, electrical and refrigeration, and shoes.
Palmer K. Strickler's d/b/a Strickler's Market.	New Glarus, Wis.	Slaughtering, fresh meat processing, frozen meat processing, curing and smoking meat and sausage making.
Universal Management, Inc.	Kokomo, Ind.	Processing of scrap metal, recycling commercial waste and refuse removal.
Cornwell Co., Inc.	Paoli, Ind.	Manufacturing of wooden clocks and wooden parts for clocks.
Elk Rapids Packing Co. Cooperative	Elk Rapids, Mich.	Processing of both canned and frozen sweet cheerris.
Henry Eugene Hart	Karnes City, Tex.	Retail auto parts and hardware.
J. & J. Farms, Inc.	Verhalen, Tex.	Operation of commercial feed yard, grazing cattle and farming.
Hale Manufacturing Co., Inc.	Sherman, Tex.	Manufacturing and sales of horse and cattle trailers.
Mobley Construction Co., Inc.	Dardanelle, Ark.	Retail of sand and gravel.
Wood-High Cooperative Gin	Inez, Tex.	Handling of milo and corn for farmers.
Pine View Manor, Inc.	Stanberry, Mo.	Nursing home care.
K-Pack Meat Co., Inc.	Fallon, Nev.	Wholesale and retail meat sales.
Cloverply	Cloverdale, Calif.	Manufacturing of specialty plywood.
Cascade Steel Rolling Mills, Inc.	McMinnville, Oreg.	Manufacturing of iron and steel rods.
Jere Campbell Grumigen	Redmond, Oreg.	Flight service station and new fixed base operation for Piper aircraft sales in central Oregon.

[FR Doc.77-1325 Filed 1-13-77;8:45 am]

FEDERAL SUPPLEMENTAL BENEFITS (EMERGENCY UNEMPLOYMENT COMPENSATION)

Availability of Federal Supplemental Benefits in the State of Alabama

This notice announces the beginning of a new Federal Supplemental Benefit Period in the State of Alabama, effective January 9, 1977.

BACKGROUND

The Emergency Unemployment Compensation Act of 1974 (Pub. L. 93-572, enacted December 31, 1974) (the Act) created a temporary program of supplementary unemployment benefits (referred to as Federal Supplemental Benefits) for unemployed individuals who have exhausted their rights to regular and extended benefits under State and Federal unemployment compensation laws. Federal Supplemental Benefits are payable during a Federal Supplemental Benefit Period in a State which has entered into an Agreement under the Act with the United States Secretary of Labor. A Federal Supplemental Benefit Period is triggered on in a State when unemployment in the State or in the State and the nation reaches the high levels set in the Act. During a Federal Supplemental Benefit Period the maximum amount of Federal Supplemental Benefits which are payable to eligible individuals will be up to 13 weeks or 26 weeks, depending upon the level of the rate of insured unemployment in the State.

There is a Federal Supplemental Benefit "on" indicator in a State for a week if the United States Secretary of Labor determines with respect to the State, that, (a) There is a State or National "on" indicator for the week, as determined for the purposes of payment of extended benefits under the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and (b) The employment security agency of the State has determined that the average rate of insured unemployment in the State for the period consisting of that week and the immediately preceding twelve weeks equalled or exceeded 5.0 percent. The Federal Supplemental Benefit Period actually begins with the third week following the week for which there is an "on" indicator, and lasts for a minimum period of not less than 26 weeks.

Similarly, an "off" indicator ending a Federal Supplemental Benefit Period occurs in a week when the Secretary of Labor determines that the average rate of insured unemployment (as determined by the State employment security agency) for the period consisting of that week and the immediately preceding twelve weeks is less than 5.0 percent. The Federal Supplemental Benefit Period actually ends with the third week after the week in which there is an "off" indicator, but not earlier than the end of the twenty-sixth week of the period.

DETERMINATION OF "ON" INDICATOR

The Secretary of Labor has determined under section 203(d) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and 20 CFR 615.13(a), that there is a National "on" indicator in effect which is applicable to every State, as announced in the notice published in the FEDERAL REGISTER on February 21, 1975, at 40 FR 7722. The employment security agency of the State of Alabama has determined under the Act and 20 CFR 618.19(a)(2) (published in the FEDERAL REGISTER on March 23, 1976, at 41 FR 12151, 12157) that the average rate of insured unemployment in the State for the period consisting of the week ending December 25, 1976, and the immediately preceding twelve weeks equalled or exceeded 5.0 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 618.19 (a), and as authorized by the Secretary of Labor's Order 4-75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40 FR 18515), that there was a Federal Supplemental Benefit "on" indicator in the State of Alabama for the week ending on December 25, 1976, and that a Federal Supplemental Benefit Period therefore commenced in that State with the week beginning on January 9, 1977.

There will be a 5-per centum period in effect in the new Federal Supplemental Benefit Period, commencing at the beginning of the new period. During the 5-percentum period an individual who is eligible for Federal Supplemental Benefits will be entitled to a maximum amount of up to 13 times the individual's weekly benefit amount, or, if less, the balance in the individual's Federal Supplemental Benefit Account.

In the event that a 6-per centum period subsequently takes effect in the new Federal Supplemental Benefit Period, because the rate of insured unemployment in the State has risen to an average of 6.0 percent or more over a period of thirteen weeks, the maximum amount of Federal Supplemental Benefits payable to an eligible individual will increase. In that event an eligible individual will be entitled to a maximum amount of Federal Supplemental Benefits of up to 26 times the individual's weekly benefit amount, or, if less, the balance in the individual's Federal Supplemental Benefit Account.

INFORMATION FOR CLAIMANTS

The State employment security agency will furnish a written notice of potential entitlement to Federal Supplemental Benefits to each individual who is an

"exhaustee" (as defined in the Act and 20 CFR 618.5) of regular and extended benefits payable under State and Federal unemployment compensation laws, and to each individual who has a previously established Federal Supplemental Benefit Account in which there is any balance as of the beginning of the new Federal Supplemental Benefit Period. The State employment security agency also will furnish a written notice to each individual for whom a Federal Supplemental Benefit Account has been established, of the beginning or ending of a 6-per centum period in the new Federal Supplemental Benefit Period, and its effect on the individual's entitlement to Federal Supplemental Benefits.

There was a prior Federal Supplemental Benefit Period in Alabama which terminated with the week ending on October 30, 1976, as announced in the notice published in the FEDERAL REGISTER on October 29, 1976, at 41 FR 47612 (corrected November 2, 1976). Immediately following the end of the prior Federal Supplemental Benefit Period, there was an additional eligibility period for each individual who qualified, which was to last for 13 weeks unless terminated sooner by reason of the beginning of a new Federal Supplemental Benefit Period. Because the new Federal Supplemental Benefit Period began prior to the end of the 13-week period, the individual additional eligibility periods terminated immediately prior to the beginning of the new benefit period.

Any individual who qualified for an additional eligibility period will be entitled to Federal Supplemental Benefits in the new Federal Supplemental Benefit Period, if there is any balance left in the individual's Federal Supplemental Benefit Account as of the beginning of the new period. The maximum amount payable to any of those individuals will be governed, as stated above, by whether a 5-per centum or a 6-per centum period is in effect and by the balance in each individual's Federal Supplemental Benefit Account.

Persons who believe they may be entitled to Federal Supplemental Benefits in the State of Alabama, or who wish to inquire about their rights under this program, should contact the nearest Unemployment Compensation Claims Office or Employment Service Division Office of the Alabama Department of Industrial Relations in their locality.

Signed at Washington, D.C. on January 11, 1977.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.77-1294 Filed 1-13-77; 8:45 am]

Occupational Safety and Health Administration

STANDARDS ADVISORY COMMITTEE ON AGRICULTURE

Appointment of Members

This is to announce the appointment of members to the Standards Advisory Committee on Agriculture, established under section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The membership of the Committee and the categories represented are as follows:

EMPLOYEE

Humberto Fuentes, Executive Director, National Association of Farmworker Organizations, 415 South Eighth Street, Boise, Idaho 83706.

Galen Kluck, Lazy K Ranch, Richland, Nebraska 68657.

Warren W. Morse, Coordinator, Occupational Safety and Health Division, Western Conference of Teamsters, 1870 Ogden Drive, Burlingame, California 94010.

Sheldon W. Samuels, Director, Health, Safety and Environment, Industrial Union Dept., AFL-CIO, Suite 311, 815 Sixteenth Street, N.W., Washington, D.C. 20006.

EMPLOYER

Perry R. Ellsworth, Executive Vice-President, National Council of Agricultural Employers, 237 Southern Building, 1425 H Street, N.W., Washington, D.C. 20005.

Wray Finney, President, American National Cattlemen's Association, P.O. Box 280, Ft. Cobb, Oklahoma 73038.

F. Grove Miller, Jr., Route 1, Box 180, North East, Maryland 21901.

George F. Sorn, Manager, Labor Division, Florida Fruit & Vegetable Association, P.O. Box 20155, Orlando, Florida 32814.

STATE

J. Evan Goulding, Commissioner, Colorado Department of Agriculture, 1525 Sherman Street, Denver, Colorado 80203.

Irma M. West, M.D., Public Health Medical Officer III, Occupational Health Branch, California Department of Health, 714 P Street, Room 440, Sacramento, California 95814.

FEDERAL

John A. McTarnaghan, Special Programs Officer, Office of Intergovernmental Affairs, Room 105-W, U.S. Department of Agriculture, Washington, D.C. 20250.

William L. Wagner, Chief of Environmental Investigations Branch, Appalachian Laboratory for Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

PUBLIC

John G. Erisman, Ph. D., Extension Environmental Health and Safety Information Coordinator, Department of Agricultural Engineering, Frazier Rogers Hall, University of Florida, Gainesville, Florida 32611.

Ordie L. Hogsett, Extension Safety Specialist, University of Illinois, Urbana, Illinois 61801.

Richard G. Pfister, Ph.D., Extension Safety Engineer, Agricultural Engineering Department, Michigan State University, East Lansing, Michigan 48824.

Messrs. Erisman, Hogsett, Miller, Morse, and Sorn are reappointments; all others are new members.

The members were selected on the basis of their experience and competence in the field of agricultural safety and health and will serve until June 30, 1978. Dr. Richard Pfister will serve as Committee Chairman.

Signed at Washington, D.C. this 21st day of December, 1976.

W. J. USERY, Jr.,
Secretary of Labor.

[FR Doc.77-1341 Filed 1-13-77;8:45 am]

Wage and Hour Division

[Administrative Order No. 648]

INDUSTRY COMMITTEES FOR VARIOUS INDUSTRIES IN PUERTO RICO

Appointment; Convention; Hearing

1. Pursuant to section 5 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and 29 CFR 511, I hereby appoint the following industry committees for the indicated industries:

Committee No.	*Industry*
139-A	The furniture and fixtures and lumber and wood products industry in Puerto Rico.
139-B	The stone, clay, and glass products and nonmetallic mining industry in Puerto Rico.
140	The construction industry in Puerto Rico.

2. These industries are defined as indicated below:

a. (1) The furniture and fixtures and lumber and wood products industry is defined as the manufacture of household, office, public building, and restaurant furniture, and office and store fixtures; and the manufacture of products made from lumber, wood and related materials; and logging and wood preserving: *Provided, however,* That the industry shall not include any product or activity in the metal, machinery, transportation equipment, and allied products industry; the jewelry and miscellaneous products manufacturing industry; the construction industry; or the paper, paper products, printing and publishing industry.

(2) The industry includes, without limitation, furniture, office and store fixtures, mattresses and bedsprings, boxes and containers, cooperage, window and door screens and blinds, caskets and coffins, matches, sawmill products, planing and plywood mill products; charcoal; trays, bowls, and other woodenware; excelsior, cork, bamboo, rattan and willowware articles.

b. The stone, clay and glass products and nonmetallic mining industry in Puerto Rico is defined as the manufacture from nonmetallic mineral products such as, but not limited to, structural clay products, china, pottery, tile and other ceramic products and refractories; glass and glass products (except lenses); dimension and cut stone; crushed stone; sand and gravel; hydraulic cement; abrasives, lime, concrete, gypsum, mica, plaster and asbestos; and the mining, quarrying or other extraction and further processing of nonmetallic minerals, except chemical and fertilizer minerals and fossil fuels: *Provided, however,* That the industry shall not include any product or activity included in the jewelry and miscellaneous products manufacturing industry; the construction industry; the metal, machinery, transportation equipment and allied products industry; or the chemical, petroleum and related products industry.

c. The construction industry in Puerto Rico, to which this part shall apply, is defined as follows: The design, construction, reconstruction, alteration, repair and maintenance of buildings, structures, and other improvements on land; the assembling at the construction site and the installation of machinery and other facilities in or upon such improvements; and the dismantling, wrecking, or other demolition of such improvements: *Provided, however,* That the construction industry shall not include any activity carried on by an establishment in Puerto Rico for its own use to which another wage order for the primary business of such establishment would otherwise be applicable.

3. Pursuant of Section 8 of the Fair Labor Standards Act of 1938 (29 U.S.C. 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR Part 511, I hereby:

a. Convene the above-appointed industry committees;

b. Refer to the industry committees the question of the minimum rates of wages to be fixed for the above-mentioned industries in Puerto Rico.

c. Give notice of the hearings to be held by the several committees at the times and place indicated. The committee shall investigate conditions in the industries, and the committees, or any authorized subcommittee thereof, shall hear witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform their duties and functions under the aforementioned Act.

Industry Committee No. 139–A will meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 10 a.m. on Monday, February 14, 1977.

Following this hearing Industry Committee No. 139–B will immediately convene to conduct its investigation and begin its public hearing.

Industry Committee No. 140 will meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 10 a.m. on Monday, March 14, 1977.

The hearings will take place in the offices of the Wage and Hour Division on the fourth floor of the New Federal Office Building, Carlos Chardon Street, Hato Rey, Puerto Rico.

4. The rate or rates recommended by the committee shall not exceed the rates prescribed by sections 6(a) and 6(b) of the Act, namely $2.30 an hour after December 31, 1976.

Each industry committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, or American Samoa; except that each committee shall recommend the minimum rates prescribed in section 6(a) or section 6(b), unless there is substantial documentary evidence including pertinent unabridged profit and los statements and balance sheets for a representative period of years which establishes that the industry or a predominant portion thereof, is unable to pay the wage.

5. Whenever an industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities in the industry than may be determined for other employees in that industry, the committee shall recommend such reasonable classifications within the 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 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 an industry, in making such classification, and in determining the minimum wage rate for such classifications, the industry 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.

6. The Administrator shall prepare an economic report for the industry committees containing such data as he is able to assemble pertinent to the matters referred to them. Copies of such reports may be obtained at the national and Puerto Rican offices of the Wage and Hour Division of the Department of Labor as soon as they are completed and prior to the hearings. The industry committees shall take official notice of the facts stated in the economic reports to the extent that they are not refuted at the hearing.

7. The procedure of industry committees shall be governed by 29 CFR Part 511. Interested persons wishing to participate in the hearings shall file prehearing statements, as provided in 29 CFR 511.8 containing the data specified in that section not later than 10 days before the first hearing date set for each committee as set forth in this notice of hearing i.e. February 4, 1977 for matters to be considered by Industry Committees No. 139–A and 139–B; and March 4, 1977 for matters to be considered by Industry Committee No. 140.

Signed at Washington, D.C. this 11th day of January, 1977.

W. J. USERY, Jr.,
Secretary of Labor.

[FR Doc.77-1290 Filed 1-13-77;8:45 am]

[Administrative Order No. 649]

INDUSTRY COMMITTEE FOR INDUSTRIES IN THE VIRGIN ISLANDS

Appointment; Convention; Hearing

1. Pursuant to section 5 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR 511, I hereby appoint Industry Committee No. 17 for the Virgin Islands for the classifications defined below:

These classifications shall not include any employee employed in the Virgin Islands by the United States or by the government of the Virgin Islands, by an establishment which is a hotel, motel, or restaurant, or by any retail or service establishment which employed such employee primarily in connection with the preparation or offering of food and beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guest of members of clubs.

2. These classifications are defined as follows:

a. *Pre-1966 coverage classifications.* The classifications for pre-1966 coverage apply to all activities of employees in the Virgin Islands which were within the purview of section 6 of the Fair Labor Standards Act of 1938 prior to the effective date of the Fair Labor Standards Amendments of 1966.

(1) The watch assembly classification is defined as the assembly of watches and watch movements.

(2) The milk processing classification is defined as the processing or recombining of fluid milk and cream for wholesale or retail distribution.

(3) The retailing, wholesaling and warehousing classification is defined as all activities in connection with the selling of goods or services at retail, including the operation of retail stores and other retail establishments, the wholesaling and warehousing, and other distribution of commodities: *Provided, however,* That this classification shall not include retailing and or wholesaling activities included within other wage order classifications in the Virgin Islands: *Provided, further,* That this classification shall not include food service activities in retail establishments.

(4) The construction classification is defined as all construction, reconstruction, structural renovation and demolition, on public or private account, of buildings, housing, highways or streets, catchments, dams and any other structures.

(5) The shipping and seamen classification is defined as the transportation of passengers and cargo by water and all activities in connection therewith, including storage and lighterage operations, and the activities of seamen on United States vessels.

(6) The miscellaneous manufacturing activities classification is defined as all manufacturing activities in the Virgin Islands covered by the Fair Labor Stand-

ards Act prior to the Fair Labor Standards Amendments of 1966, with the exception of the assembly of watches and watch movements, milk processing, the manufacture of petroleum products, pharmaceuticals and toiletries, textiles and textile products, alcoholic beverages, and the processing of bauxite to extract alumina and the further processing related to the production of aluminum.

b. *1966 coverage classifications.* The classifications for 1966 coverage include only those activities of employees in the Virgin Islands which were brought within the purview of section 6 of the Fair Labor Standards Act of 1938 by the Fair Labor Standards Amendments of 1966 or by section 906 of the Education Amendments of 1972.

(1) The agriculture classification is defined as farming in all its branches, including the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including the preparation for market, delivery to storage or to market or to the carriers for transportation to market; processing, handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or making cheese or butter or other dairy products; the operation of a country elevator, including such an establishment which sells products and services used in the operation of a farm; the ginning of cotton for market; and the transportation of fruits and vegetables, whether or not performed by a farmer, from the farm to a place of first processing or first marketing.

(2) The retailing, wholesaling and warehousing classification is defined as all activities in connection with the selling of goods or services at retail, including the operation of retail stores and other retail establishments, the wholesaling and warehousing and other distribution of commodities: *Provided, however,* That this classification shall not include retailing and/or wholesaling activities included within other wage order classifications in the Virgin Islands: *Provided, further,* That this classification shall not include food service activities in retail establishments.

(3) The construction classification is defined as all construction, reconstruction, structural renovation and demolition, on public or private account, of buildings, housing, highways, or streets, catchments, dams and any other structures.

(4) The laundry and cleaning classification is defined as the laundering, dry cleaning, and incidental work such as repair of clothing and fabrics on which such work is done and the work done in family and commercial power laundries, linen supply and industrial laundries, diaper services, self-service laundries, hand laundries, cleaning and dyeing plants and rug cleaning and repairing plants.

(5) The manufacturing activities classification is defined as all manufacturing activities in the Virgin Islands covered by the Fair Labor Standards Act solely by reason of the Fair Labor Standards Amendments of 1966.

c. *1974 coverage classifications.* The classification for 1974 coverage include only those activities of employees in the Virgin Islands which were brought within the purview of section 6 of the Fair Labor Standards Act of 1938 by the Fair Labor Standards Amendments of 1974.

(1) The domestic service classification is defined as service of a household nature performed by an employee in or about the private home of the person by whom he or she is employed. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling maintained by an individual or a family in an apartment house or hotel may constitute a private home. However, a dwelling primarily used as a boarding or lodging house for the purpose of supplying such services to the public as a business enterprise is not a private home. Domestic service in and about a private home includes, but is not limited to, services performed by persons employed as cooks, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms and chauffeurs.

(2) The motion picture theater classification is defined as the activities of employees of motion picture theaters.

(3) The retail and service employees classification is defined as the activities of employees employed in retail and service establishments that are parts of covered enterprises and that have an annual volume of sales that is less than $250,000, but not less than $225,000 after January 1, 1975, and is not less than $200,000 after January 1, 1976, and in any amount after January 1, 1977. (Retail and service establishments with $250,000 or more in an annual sales volume are covered under the pre-1974 provisions of the Fair Labor Standards Act of 1938).

3. Pursuant to Section 8 of the Fair Labor Standards Act of 1938 (29 U.S.C. 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR Part 511, I hereby:

a. Convene the above-appointed Industry Committee;

b. Refer to the Industry Committee the question of the minimum rates of wages to be fixed for the above-mentioned classifications in the Virgin Islands.

c. Give notice of the hearings to be held by the Committee at the times and place indicated. The Committee shall investigate conditions in the classifications and the Committee, or any authorized subcommitte thereof, shall hear witnesses and receive such evidence as may be necessary or appropriate to enable the Committee to perform its duties and functions under the aforementioned Act.

The Committee will meet in executive session to commence its investigation at 9:30 a.m. and begin its public hearing at 11 a.m. on Monday, Febuary 28, 1977, at the public library, Christianstead, St. Croix, Virgin Islands. The public hearing will continue on March 1, 1977. Upon completion of its proceedings in St. Croix, the Committee will move its proceedings to the College of the Virgin Islands, St. Thomas, Virgin Islands where the hearing will resume at 9:30 a.m. on Wednesday, March 2, 1977.

4. The rate or rates recommended by the Committee shall not exceed the rates prescribed by Sections 6(a) and 6(b) of the Act, namely $2.30 an hour after December 31, 1976; except, however, the rate or rates recommended for agricultural employees shall not exceed those rates prescribed by Section 6(a)(5) of the Act, namely $2.20 during the year beginning January 1, 1977, and $2.30 an hour after December 31, 1977. The Committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, or American Samoa; except that the Committee shall recommend the minimum rates prescribed in section 6(a) or section 6(b), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years which establishes that the industry or a predominant portion thereof, is unable to pay the wage.

5. Whenever the Committee finds that a higher minimum wage may be determined for employees engaged in certain activities in the industry than may be determined for other employees in that industry, it shall recommend such reasonable classifications within the 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 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 an industry, in making such classification, and in determining the minimum wage rates for such classifications, the Committee shall consider, among other relevant factors, the following: (a) Competitive conditions as affected by transportation, living, 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.

6. The Administrator shall prepare an economic report for the Committee containing such data as he is able to assemble pertinent to the matters referred to it. Copies of such reports may be obtained at the national and Puerto Rican offices of the Wage and Hour Division of the U.S. Department of Labor as soon as they are completed and prior to the hearings. The Committee shall take official notice of the facts stated in the economic reports to the extent that they are not refuted at the hearing.

7. The procedure of the industry committee shall be governed by 29 CFR Part 511. Interested persons wishing to participate in the hearing shall file prehearing statements, as provided in 29 CFR 511.8 containing the data specified in that section not later than 10 days before the hearing date, i.e., February 18, 1977.

Signed at Washington, D.C. this 11th day of January 1977.

W. J. USERY, Jr.,
Secretary of Labor.

[FR Doc.77-1295 Filed 1-13-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

STUDENT SCIENCE TRAINING PROGRAM, PROJECT DIRECTORS

Meeting

A project directors' meeting will be held from 9:00 a.m. to 5:00 p.m. on February 11, 1977 and from 9:00 a.m. to noon on February 12, 1977 at the Sheraton Park Hotel, 2660 Woodley Road, N.W., Washington, D.C.

The purpose of this meeting is to give project directors of the Student Science Training Program an opportunity to become better informed regarding appropriate methods for conducting internal project evaluation and to allow the program staff to set into motion mechanisms for monitoring of projects.

While these project directors' meetings are not considered to be a meeting of an "advisory committee" as that term is defined in section 3 of the Federal Advisory Committee Act (Pub. L. 92-463) the conferences are believed to be of sufficient importance and interest to the general public to be announced in the FEDERAL REGISTER as meetings open for public attendance and participation.

The meeting will be chaired by Dr. Max Ward. Because of space limitation, members of the public who wish to attend should call (202-282-7150) regarding attendance at any of these meetings.

ALLEN M. SHINN, Jr.,
Deputy Assistant Director for Science Education.

[FR Doc.77-1309 Filed 1-13-77;8:45 am]

SUBPANEL ON FIELD CENTER OPERATION OF THE NSF CHAUTAUQUA-TYPE SHORT COURSES FOR COLLEGE TEACHERS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Field Center Operation of the NSF Chautauqua-Type Short Courses for College Teachers of the Advisory Panel on Science Education Projects.

Date and time: February 3-5, 1977: 9 a.m. to 5 p.m. on Feb. 3 and Feb. 4; 9 a.m. to 12 noon on Feb. 5.

Place: Quality Inn-Downtown, Massachusetts Ave. and Thomas Circle, N.W., Washington, D.C.

Type of meeting: Closed.

Contact person: Ms. Mary Lewis, Program Manager, Room W-456, National Science Foundation, Washington, D.C. 20550, telephone (202) 282-7795.

Purpose of panel: To provide advice and recommendations concerning support for science education.

Agenda: To review and evaluate science education proposals and projects as part of the selection process for awards.

Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.77-1310 Filed 1-13-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 6, 1977 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

UNITED STATES INTERNATIONAL TRADE COMMISSION

Importers' questionnaire, annually, large importers, Laverne V. Collins, 395-5867.

Producers' questionnaire, annually, domestic producers of specialty steel, Laverne V. Collins, 395-5867.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education/Employment/Reference Inquiry, AID-610-10, on occasion, former employers, Lowry, R. L., 395-3772.

RAILROAD RETIREMENT BOARD

Annual report, G-19Q, annually, beneficiaries under RRA, Caywood, D. P., 395-3443.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Subjective probability assessment of uranium potential, State of Wyoming, single time, experts on Wyoming uranium/geology, Tracey Cole, 395-5870.

DEPARTMENT OF AGRICULTURE

Forest Service:

Forest Industry Survey—1976, single time, primary forest product manufacturers in California, Oregon, and Washington, Caywood, D. P., 395-3443.

National Assessment of Wildlife & Fish—State Estimates of Trends in Use and Population, single time, Wildlife & Fisheries Biologists and State Fish and Game Depts., Maria Gonzalez, 395-6132.

DEPARTMENT OF COMMERCE

Economic Development Administration, Title IX Evaluation Interview Guides, ED-740Q, through E, single time, persons involved with title IX grants, Economics and General Government Division, Raynsford, R., 395-3451.

Bureau of Census, Census of Wholesale Trade, Retail Trade and Service Industries, single time, retail, wholesale, service establishments, Peterson, M. O., 395-5631.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration:

1977 Survey of Child Survivor Families, SSA-3457, single time, families with minor maternal or paternal orphans, Reese B. F., 395-3211.

Statement of Death and Burial Expenses by Funeral Director, SSA-2872, on occasion, funeral directors when they receive a body for burial, Caywood, D. P., 395-3443.

REVISIONS

NATIONAL SCIENCE FOUNDATION

1977 Survey of Doctorate Recipients, annually, Doctoral Scientists, Engineers and Humanists, Kathy Wallman, 395-6140.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration, Biweekly progress report of telephone construction and engineering services, REA-521, weekly, Consulting Engineers of REA Telephone Borrowers, Tracey Cole, 395-5870.

DEPARTMENT OF COMMERCE

Bureau of Census, Privacy and Confidentiality Opinion Survey—Refusal Follow-Up, PCS-100, PCS-200, single time, refusals to PCS opinion survey, Maria Gonzalez, 395-6132.

DEPARTMENT OF DEFENSE

Department of the Air Force, Aircraft-Missile Maintenance Production Compression Report, AFLC-222, weekly, Aircraft/Missile Maintenance Contractors, Warren Topelius, 395-5872.

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

Rocky Flats plutonium study form letter and telephone interview, on occasion, individuals in Colorado, Lowry, R. L., 395-3772.

NATIONAL CREDIT UNION ADMINISTRATION

Annual report for State-chartered credit unions, NCUA 5306, annually, State-chartered credit unions, Marsha Traynham, 395-4529.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Research annual technical report, W-1530/1A, annually, research institutions, Lowry, R.L., 395-3772.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Data report of spouse (alien applicants for AEC employment), AEC-354, on occasion, U.S. ERDA and contractor employees, Marsha Traynham, 395-4529.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Monthly report of participants under contract, AID 1380-9, monthly, professional associations and universities, Lowry, R. L., 395-3772.

ENVIRONMENTAL PROTECTION AGENCY

Power plant survey form, single time, energy users larger than 99 x 10 Btu per hour, Eliett, C.A., 395-5867.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Research final project report, W-1530/1B, on occasion, research institutions, Lowry, R. L., 395-3772.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service:
- Regulations—Beekeeper Indemnity Payment program, on occasion, beekeepers, Marsh Traynham, 395-4529.
- Report of loss on a colony basis and application for payment (beekeepers), ASCS-448, on occasion, beekeepers, Marsha Traynham, 395-4529.
- Apiary report, ASCS-446, annually, beekeepers, Marsha Traynham, 395-4529.

Forest Service:
- Application for permit to conduct archeological or paleon to logical explorations or excavations in U.S., on occasion, reputable museums and universities, Marsha Traynham, 395-4529.

Agricultural Marketing Service:
- Rules and regulations under the Federal Seed Act (recordkeeping requirements), on occasion, individual and firms handling seeds, Marsha Traynham, 395-4529.

DEPARTMENT OF COMMERCE

Economic Development Administration:
- Borrower's Certification of Current Status and Request for EDA Action, ED 270, on occasion, Business Entities and Local Development Corp., Lowry, R. L., 395-3772.

National Oceanic and Atmospheric Administration:
- Small-Craft Chart Facility Questionnaire, NOAA 77-1, annually, facility operators of marinas, boatyards, etc., Warren Topelius, 395-5872.
- Small Craft Facility Field Report Nautical Chart Revisions, NOAA 77-3, on occasion, boating safety organizations, Warren Topelius, 395-5872.

Maritime Administration, Manual of General Procedures for Determining Operating-Differential Subsidy Rates, MA-344, on occasion, subsidized steamship operators, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development, PCC-MIS Reports To Be Submitted to Contractor, quarterly, contractors, Caywood, D. P., 395-3443.

DEPARTMENT OF LABOR

Labor Management and Service Administration, Employer Report and Instructions (Employers Dealing with Labor Organizations and Union Officials), LM-10, on occasion, employers involved financially with labor unions, Marsha Traynham, 395-4529.

DEPARTMENT OF THE INTERIOR

Bureau of Mines:
- Report of Bureau of Mines Helium Receipts and Distribution, HA-285, semi-annually, helium division customers, Marsha Traynham, 395-4529.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration:
- Measuring the Effects of System Operating Policies on the Travel Behavior and Desires of Individuals, single time, individuals, Strasser, A., 395-5867.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-1339 Filed 1-13-77;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

PRIVATE INVESTIGATIONS FIRMS

Hearing

Correction

In FR Doc. 77-406 appearing at page 1324, in the issue of Thursday, January 6, 1977 the heading is corrected to read as set forth above.

SECURITIES AND EXCHANGE COMMISSION

BOSTON STOCK EXCHANGE

Unlisted Trading Privileges in Certain Securities

JANUARY 10, 1977.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and registered on one or more other national securities exchanges:

Fred S. James & Co., Inc., common stock $0.50 par value; File No. 7-4901.

Loctite Corp., common stock no par value; File No. 7-4902.

United States Filter Corp., common stock no par value; File No. 7-4903.

Upon receipt of a request, on or before January 26, 1977 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549 not later than the date specified. If no one requests a hearing with respect to any particular applications, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1313 Filed 1-13-77;8:45 am]

[Release No. 34-13143; File No. SR-DTC-76-12]

DEPOSITORY TRUST CO.

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), notice is hereby given that on December 20, 1976, 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 permits Participants of The Depository Trust Company (DTC) to maintain on deposit with DTC Treasury bills subject to roll-over options. Under the proposed procedures, Participants will be able to take advantage of such options without withdrawing the certificates evidencing such Treasury bills from the system. The proposed rule change is attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-76-12.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to permit DTC's Participants to take advantage of "roll-over" options through DTC. Roll-over options, which are available to holders of Treasury bills,

enable new bills to be paid for from the proceeds of old bills maturing on the issuance date. Without a roll-over procedure through DTC, Participants with Treasury bills on deposit would have to obtain Federal funds from DTC on maturity date in time to pay for new purchases on the same day.

The proposed rule change relates to DTC's carrying out the purposes of section 17A of the Securities Exchange Act of 1934 (the Act) by increasing DTC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions in that the proposed rule change will encourage immobilization of certificates evidencing securities subject to roll-over options.

Comments regarding the proposed roll-over options were solicited from DTC Participants by articles in DTC's Newsletters of February 1976, May 1976, August 1976, September/October 1976 and November 1976 and by Important Notice dated December 3, 1976. Draft procedures for the proposed service, similar to the procedures set forth in Exhibit 2 of the filing, were sent to Participants who asked to review draft procedures. No written comments in response to the Newsletter or the Important Notice were received.

No burden on competition will be caused by the proposed rule change.

On or before February 18, 1977, 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 and exhibits 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, NW., 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 be submitted on or before February 4, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 10, 1977.

[FR Doc.77-1306 Filed 1-13-77;8:45 am]

[File No. 1-6074]

MCDONOUGH CO.

Application to Withdraw From Listing and Registration

JANUARY 10, 1977.

In the matter of McDONOUGH COMPANY (Common stock, $1.00 par value); Securities Exchange Act of 1934 Section 12(d).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

This security has become listed and registered on the New York Stock Exchange, Inc., and in the opinion of the Company, the expenses of maintaining its listing on both exchanges outweigh the benefits that might be derived therefrom.

The American Stock Exchange has not objected to this application.

Any interested person may, on or before February 7, 1977, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1314 Filed 1-13-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JANUARY 10, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

National Mines Service Co., common stock, $1 par value; File No. 7-4900.

Upon receipt of a request, on or before January 26, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1304 Filed 1-13-77;8:45 am]

[Release No. 34-13144; File No. SR-SCCP-76-4]

STOCK CLEARING CORPORATION OF PHILADELPHIA

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), notice is hereby given that on December 20, 1976, the above-mentioned self-regulatory organiaztion filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Stock Clearing Corporation of Philadelphia (SCCP) proposes a rule change which generally will enable it to guarantee delivery to buyers who purchase for tender, for trades which settle one day prior to expiration of the protection period as opposed to its existing procedure of guaranteeing delivery only for trades which settle on the expiration date of the tender offer.

STATEMENT OF BASIS AND PURPOSE

The purpose of the rule change is to increase the capacity of Stock Clearing Corporation of Philadelphia to facilitate the prompt and accurate clearance and settlement of security transactions.

No burden on competition will be imposed by the proposed rules.

On or before February 18, 1977, 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 six 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 by February 4, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 10, 1977.

[FR Doc. 77-1305 Filed 1-13-77;8:45 am]

[File No. 500-1]

STRATFORD OF TEXAS, INC.

Suspension of Trading

JANUARY 7, 1977.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Stratford of Texas, Inc., being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 12:05 p.m. (EST) on January 7, 1977 through January 16, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1307 Filed 1-13-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Finance Docket No. 4]

GUARANTEE OF OBLIGATIONS

Receipt of Application

Project: Notice is hereby given that William M. Gibbons ("Trustee"), Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor ("Rock Island"), 139 West Van Buren Street, Chicago, Illinois, 60605, has filed an application with the Federal Railroad Administrator under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 831, to secure a commitment by the United States to guarantee trustee's certificates or other evidence of indebtedness to be issued by the Trustee in the principal amount of $7,240,000. Loan arrangements have not been completed at this time.

The proceeds of the loan are to be used by the applicant to rehabilitate and improve the Rock Island's main line between Memphis, Tennessee, and Little Rock, Arkansas, a distance of approximately 135 miles, to permit operation of trains at a maximum speed of 60 miles per hour. Major items contained in the work program include relaying of 55 turnouts, extension of four sidings, surfacing the line, tie renewals, grade crossing improvements, bridge repairs, installation of hot box detectors and the purchase of work equipment.

Justification for Project: The Trustee states that improvement of the line to permit maximum speeds of 60 miles per hour will result in running time improvements of approximately 38 percent and enable the Rock Island to compete more effectively for high-value, service-sensitive traffic. The Trustee further states that the line to be improved constitutes a crucial link in a major connection between the South and the West, and provides service to industry and agriculture in the Southwest and the upper Midwest.

Comments: Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590, not later than the comment closing date shown below. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

Requests for disclosure of information contained in the application shall be made pursuant to the regulations of the Office of the Secretary of Transportation, set forth in section 7 of Title 49 of the Code of Federal Regulations.

The comments will be taken into consideration by the Federal Railroad Administration ("FRA") in evaluating the application. However, formal acknowledgement of the comments will not be provided.

The FRA has not approved or disapproved this application, nor has it passed upon the accuracy or adequacy of the information contained therein. (Sec. 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Dated: January 10, 1977.

Comment closing date: February 14, 1977.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc.77-1204 Filed 1-13-77;8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

CANNED TOMATOES AND CANNED TOMATO CONCENTRATES FROM ITALY

Preliminary Countervailing Duty Determination

On November 11, 1976, a "Notice of Receipt of Countervailing Duty Petition and Reinstitution of Investigation" was published in the FEDERAL REGISTER (41 FR 49922). This notice stated that information had been received alleging that bounties or grants are being paid or bestowed, directly or indirectly, by the Italian Government to producers and processors of canned tomatoes and canned tomato products within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the Act").

The referenced notice further stated that it was not clear whether the information presented related to alleged bounties or grants comparable to those previously determined to exist, Treasury decisions concerning which were cited in paragraphs two, three and four of that notice. The foregoing notice declared that the information available indicated that the subject merchandise imported directly from Italy benefits from a government payment to agricultural cooperatives and to processors of such products. Accordingly, the Secretary concluded that a reinstitution of the investigation was warranted and announced that a preliminary determination would be made no later than January 2, 1977, six months after the date of receipt of information regarding the newly alleged bounties or grants.

On the basis of an investigation conducted pursuant to § 159.47(c), Customs Regulations (19 CFR 159.47(c)), it has been determined that the provisions of the Italian law which is the subject of the allegations and which basically provided for payments for stockpiling and price supports were never utilized by the tomato processing industry. Furthermore, the authority for payments of the nature described above expired November 20, 1975. Although payments were made to the entire tomato industry under another provision dealing with general qualitative improvement and protection of production, those payments were apparently very small in size, especially considering the small proportion of the total production exported to the U.S. Furthermore the information now available indicates that these payments have

been suspended. Should they be reinstated a determination as to whether they constitute a bounty or grant would be required.

Accordingly, it is determined preliminarily that no bounty or grant, within the meaning of section 303, is being paid or bestowed directly or indirectly upon the manufacture, production or exportation of canned tomatoes and canned tomato concentrates imported directly from Italy. A final decision in this case is required on or before July 2, 1977.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to the preliminary determination. Submission should be addressed to the Commisisoner of Customs, 1301 Constitution Avenue, NW., Washington, D.C., in time to be received by this office not later than February 14, 1977.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

G. R. DICKERSON,
Commissioner of Customs.

Approved: January 10, 1977.

JERRY THOMAS
Under Secretary of the Treasury.

[FR Doc.77-1248 Filed 1-13-77;8:45 am]

Office of the Secretary

[Treasury Department Order No. 245]

LAW ENFORCEMENT OFFICER POSITIONS WITHIN THE DEPARTMENT OF THE TREASURY

Establishing Maximum Entry Age Limit

1. Pursuant to my authority as Secretary of the Treasury, and the authority vested in me by Pub. L. 93-350, Section I, paragraph (2)(d), it has been determined that the date immediately preceding one's 35th birthday is the maximum age for eligibility for an original appointment to a position as law enforcement officer as defined in 5 U.S.C. 8331 (20). This determination has been approved by the Civil Service Commission.

2. Exceptions to the above determination may be made in situations where skill shortages arise in specific law enforcement positions in which event the date immediately preceding one's 40th birthday will be the maximum age of eligibility for an original appointment to a position as a law enforcement officer.

3. Since this Order involves personnel functions, the Assistant Secretary (Administration), or his designee, are authorized, pursuant to this Order and Treasury Department Order No. 190 as revised to issue necessary regulations or instructions to implement the provisions of this Order.

4. This Order shall be effective on November 29, 1976.

Dated: January 7, 1977.

WILLIAM E. SIMON,
Secretary.

[FR Doc.77-1247 Filed 1-13-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 304]

Assignment of Hearings

JANUARY 11, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 135684 (Sub 26), Bass Transportation Co., Inc., now being assigned February 23, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 141932 (Sub-No. 1), Polar Transport, Inc., now assigned January 11, 1977, at Washington, D.C. is postponed to February 15, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-8685, J. Frances McCarthy DBA Mac Transport Lines Revocation of Permit, now assigned January 11, 1977, at Boston, Mass. is postponed indefinitely.

MC 140829 (Sub-No. 13), Cargo Contract Carrier Corp., now assigned January 20, 1977, at Chicago, Ill., is canceled and application dismissed.

MC 139495 (Sub-No. 163), National Carriers, Inc., now assigned January 26, 1977, at Dallas, Tex., is canceled and application dismissed.

MC 142322 (Sub-No. 2), V & J Trucking, Inc., application dismissed.

MC 142144 (Sub-No. 1), Jelco Buses, Inc., application dismissed.

AB 136, Chicago South Shore And South Bend Railroad Abandonment of Line Over Illinois Central Gulf Railroad Between Randolph Street Station And 115th Street (Kinsington) in Cook County, Illinois, now being assigned January 24, 1977, at Chicago, Illinois, will be held in Room 1903, Everett McKinley Dirksen Bldg., 219 South Dearborn Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1299 Filed 1-13-77;8:45 am]

[AB 131]

YAKIMA VALLEY TRANSPORTATION COMPANY

Abandonment of Railroad Services

DECEMBER 28, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Yakima Valley Transportation Company of a .46 mile terminal segment of its line of railroad in Selah, Yakima County, Wash., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the associated environmental impacts are not considered significant because the line has not been utilized since 1971; therefore no traffic diversion and subsequent alterations in fuel consumption, exhaust emissions, noise intrusions, and safety conditions are involved. It should be noted that removal of the line would enable the city of Selah to proceed with plans to widen a segment of North First Street.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washingon, D.C., 20423, on or before February 10, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1298 Filed 1-13-77;8:45 am]

[Notice No. 5]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 10, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contem-

plated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 115495 (Sub-No. 32TA), filed December 30, 1976. Applicant: UNITED PARCEL SERVICE, INC., 300 N. 2nd St., St. Charles, Ill. 60174. Applicant's representative: Irving R. Segal, 1719 Packard Bldg., Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment); (A) between the premises of the Catalog Distribution facilities of J. C. Penney Company, Inc., in Wauwatosa, Wis.; Forest Park, Ga., and Columbus, Ohio, on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming; and (B) between the premises of the Catalog Distribution facilities of J. C. Penney Company, Inc., in Wauwatosa, Wis.; Forest Park, Ga.; and Columbia, Ohio, on the one hand, and, on the other, points in Pennsylvania, West Virginia, and Virginia, within ten miles of the Pennsylvania-Ohio, the West Virginia-Kentucky, the Virginia-Kentucky, the Virginia-Tennessee, and the Virginia-North Carolina State lines. Restrictions: (a) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 180 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment; and (b) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor to one location to one consignee at one location on any one day. Applicant intends to interline at points in Pennsylvania-Ohio, the West Virginia-Virginia, within ten miles of the Pennsylvania-Ohio, the West Virginia-Kentucky, the Virginia-Kentucky, the Virginia-Tennessee, and the Virginia-North Carolina State lines, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. C. Penney Company, Inc., William A. Deehan, Traffic Division, Dist. Dept., 825 7th Ave., New York, N.Y. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 116200 (Sub-No. 10TA), filed December 30, 1976. Applicant: UNITED PARCEL SERVICE, INC., 643 W. 43rd St., New York, N.Y. 10046. Applicant's representative: S. Harrison Kahn (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading, between points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia, subject to the following restrictions: (a) Service is restricted to packages originating at, or destined to the premises of the Catalog Distribution Facilities of J. C. Penney Company, Inc., in Wauwatosa, Wis., Forest Park, Ga., and Columbus, Ohio, having an immediately prior or subsequent movement by United Parcel Service, Inc. (an Ohio Corporation); (b) No service shall be rendered in the transportation of any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined, and each package or article shall be considered as a separate and distinct shipment; and (c) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day. Applicant intends to interline at points in Pennsylvania, West Virginia and Virginia, within ten miles of the Pennsylvania-Ohio, the West Virginia-Kentucky, the Virginia-Kentucky, the Virginia-Tennessee, and the Virginia-North Carolina state lines, for 180 days. Supporting shipper: J. C. Penney Company, Inc., 1301 Avenue of the Americas, New York, N.Y. 10019. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 124735 (Sub-No. 16TA), filed December 27, 1976. Applicant: R. C. KERCHEVAL, INC., 2201 6th Ave., South, Seattle, Wash. 98134. Applicant's representative: Robert G. Gleason, 1127 10th Ave., East Seattle, Wash. 98102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of mobile homes and utility trailers, automotive springs, suspensions and parts thereof, brake drums, brake assemblies and parts thereof, tailgate hoists and parts thereof, wheels and wheel attaching parts, and parts* for motor vehicle chassis and motor vehicle undercarriage, from Henderson, Ky., to Seattle, Wash., under a continuing contract with Motor Wheel and Parts, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Motor Wheel and Parts, Inc., 600 S. Dakota, Seattle, Wash. 98108. Send Protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 125368 (Sub-No. 15TA), filed December 27, 1976. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, N.C. 28445. Applicant's representative: Herbert Alan Dubin, 1819 H St. NW., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61, M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Armour & Co., at or near Worthington, Minn., to points in Alabama, Georgia, North Carolina and Tennessee, restricted to traffic originating at the above-named origin and destined to the above-named destination states, for 180 days. Supporting shipper: Armour Food Company, 111 W. Clarendon, Phoenix, Ariz. 85077. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896 Raleigh, N.C. 27611.

No. MC 133119 (Sub-No. 107TA), filed December 27, 1976. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, P.O. Box 206, Akron, Iowa 51001. Applicant's representative: A. J. Swanson, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits and vegetables and frozen concentrates*, when moving in mixed loads with frozen potatoes and potato products, from the facilities of Inland Cold Storage, at or near Kansas City, Kans., and the facilities of Commercial Distribution Center, at or near Kansas City, Mo., to points in Texas, Arkansas, Florida, Alabama, Mississippi, Louisiana, Tennessee, Georgia, South Carolina, and North Carolina, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Frank Bacon, Vice-President, Glacier Sales, Division of P. D. Q. Institutional Foods, Inc., P.O. Box 2797, Yakima, Wash. 98902. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 140829 (Sub-No. 36TA), filed December 27, 1976. Applicant: CARGO

CONTRACT CARRIER CORP., P.O. Box 206, U.S. Highway 20, Sioux City, Iowa 51102. Applicant's representative: William J. Hanlon, 55 Madison Ave., Morristown, N.J. 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Section A of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the plantsite and/or storage facilities utilized by Whitehall Packing Company, Inc., at or near Whitehall and Eau Claire, Wis., to points in Massachusetts, New York, Pennsylvania, Maryland, and Washington, D.C. Restriction: The operations authorized herein are restricted to the transportation of traffic originating at the named origin and destined to points in the above-named destination states, for 180 day. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lester Pucik, Corporate Traffic Manager, Whitehall Packing Company, Inc., P.O. Box 215, Whitehall, Wis. 54773. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 141320 (Sub-No. 7TA), filed December 30, 1976. Applicant: UNITED STATES PRIORITY TRANSPORT CORPORATION, Six Ray Court, Melville, N.Y. 11746. Applicant's representative: Martin D. Friedman (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Radiopharmaceuticals, medical isotopes, medical test kits and related apparatus*, between South Plainfield, N.J., on the one hand, and, on the other, points in Pennsylvania (except the counties of Lehigh, Northampton, Bucks, Montgomery, Delaware, and Philadelphia), under a continuing contract with Medi-Physics, Inc., *radiopharmaceuticals, medical isotopes, and medical test kits*, between Carlstadt, N.J., on the one hand, and, on the other, points in Pennsylvania, Delaware, Maryland, Maine, Vermont, New Hampshire, and New York, under a continuing contract with Mallinckrodt, Inc.; *radiopharmaceuticals*, medical isotopes, and medical test kits, between North Billerica, Mass., on the one hand, and, on the other, points in New York (except New York, N.Y., and points in Nassau, Suffolk, Westchester, Rockland, Orange, Ulster, Sullivan, Putnam, and Dutchess Counties), points in Delaware (except New Castle County), points in Connecticut, (except Fairfield County), points in Pennsylvania (except Delaware, Montgomery, Philadelphia, Chester and Bucks Counties), and points in New Jersey, Vermont, New Hampshire, Maine, Massachusetts, and Rhode Island, under a continuing contract with New England Nuclear Corp., for 180 days. Supporting shippers: Mallinckrodt, Inc., 463 Barrell Ave., Carlstadt, N.J. Medi-Physics, Inc., 900 Durham Ave., South Plainfield, N.J. New England Nuclear Corp., 601 Treble Cove Road, North Billerica, Mass. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 141804 (Sub-No. 39TA), filed December 29, 1976. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, Tenn. 37072. Applicant's representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except in bulk, in tank vehicles), from points in California, to points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the International Boundary Line between the United States and Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 11 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 142741 (Sub-No. 1TA), filed December 27, 1976. Applicant: RONALD A. HESS, doing business as EQUINOX MOTORS, Route No. 7, Manchester, Vt. 05254. Applicant's representative: Arthur M. Marshall, 135 State St., Suite 200, Springfield, Mass. 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products viz, gasoline, kerosene and No. 2 fuel oil*, in bulk, in tank vehicles, from Rensselaer and Fort Ann, N.Y., to Manchester, Vt., under a continuing contract with Johnson's Fuel Service, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Johnson's Fuel Service, Inc., Manchester Center, Vt. 05255. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, Montpelier, Vt. 05602.

No. MC 142748 (Sub-No. 1TA), filed December 22, 1976. Applicant: GENARO T. CAMACHO, doing business as GENE'S FREIGHT LINE, 3230 W. Mississippi Ave., Denver, Colo. 80219. Applicant's representative: Stockton and Lewis, The 1650 Grant St. Bldg., Denver, Colo. 80203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *New tires*, from Memphis, Tenn., to Colorado Springs, Canon City, Denver, Lafayette, Loveland, Greeley, Fort Morgan, Brush, Sterling, Yuma, Wray, Burlington, Limon, LaJunta, Lamar, Rocky Ford, Trinidad, Walsenburg and Julesburg, Colo.; and Cheyenne, Sherman, Wallace, Greeley, Hamilton, Stanton, Morton, Rawlins, Thomas, Logan, Wichita, Kearney, Grant, Stevens, Decatur, Sheridan, Gove, Scott, Lane, Finney, Haskell, Gray, Ford, Seward, Mead and Clark Counties, Kans., under a continuing contract with Fleetwood Tire West, Inc.; (2) *Non-alcoholic beverages*, from Denver, Colo., to Albuquerque, N. Mex.; Amarillo and El Paso, Tex., and Salt Lake City, Utah; (3) *Pallets*, from Amarillo and El Paso, Tex., and Albuquerque, N. Mex., to Muskogee and Sapulpa, Okla.; and (4) *Glass containers*, from Muskogee and Sapulpa, Okla., to Denver, Colo. Items (2), (3) and (4) are under a continuing contract with Columbine Beverage Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Fleetwood Tire West, Inc., Co-Ordinator Co-Western KS, Box 6556, Colorado Springs, Colo. 80934. (2) Columbine Beverage Company, 4301 Broadway, Denver, Colo. 80216. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th St., Denver, Colo. 80202.

No. MC 142765 TA, filed December 28, 1976. Applicant: AMERICAN TRANSPORTATION, INC., P.O. Box 2379, Trenton, N.J. 08601. Applicant's representative: Mel P. Booker, Jr., 118 N. St. Asaph St., Alexandria, Va. 22314. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or sold by direct sale houses (except commodities in bulk), from the facilities of Amway Corp., located at or near Dayton, N.J., to points in Delaware, Maryland, New Jersey, Connecticut, points in Rockland, Orange, Westchester and Putnam Counties, N.Y.; points in that part of Virginia on and north of Interstate Highway 64; points in that part of West Virginia on and north of U.S. Highway 60 and Interstate Highway 64; and points in Pennsylvania east of the western boundaries of Potter, Clinton, Centre, Blair and Bedford Counties, Pa., under a continuing contract with Amway Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amway Corporation, Regional Distribution Center, Box 900 Monmouth Junction Road, Dayton, N.J. 08810. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 E. State St., Room 204, Trenton, N.J. 08608.

No. MC 142766 TA, filed December 23, 1976. Applicant: WHITE TIGER TRANSPORTATION, INC., 115 Jacobus

Ave., Kearny, N.J. 07032. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electronic equipment, household appliances;* and (2) *Supplies, equipment and materials* used in the manufacture and sale of (1) above (except commodities in bulk), between the facilities of Sharp Electronics Corporation, located at Paramus and South Plainfield, N.J., on the one hand, and, on the other, Boston, Mass.; Atlanta, Ga.; Nitro, W. Va.; Memphis and Nashville, Tenn.; Providence, R.I.; Pittsburgh and Altoona, Pa.; Richmond, Va.; Indianapolis, Ind.; Chicago Country La Grange, Ill.; Toledo, Ohio; Louisville, Ky.; Little Rock, Ark.; Dallas, Houston and San Antonio, Tex.; Jacksonville, Orlando, Largo, Tampa and Miami, Fla.; Jackson, Miss.; Detroit, Mich., under a continuing contract with Sharp Electronics Corporation, Paramus, N.J., for 180 days. Supporting shipper: Sharp Electronics Corporation, 10 Keystone Place, Paramus, N.J. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 142767 TA, filed December 27, 1976. Applicant: LEROY'S WRECKER SERVICE, Route 2, Box 45, Loveland, Colo. 80537. Applicant's representative: Leroy I. Davis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled vehicles*, between points in Colorado, Wyoming, Nebraska, South Dakota, North Dakota, Montana, New Mexico and Kansas, for 180 days. Supporting shippers: There are approximately 12 statements of support attached to the application which may be examined at the Interstate Commerce Commisison in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1300 Filed 1-13-77;8:45 am]

federal register

FRIDAY, JANUARY 14, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

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PROTECTION OF HUMAN SUBJECTS

Research Involving Prisoners

National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

Report and Recommendations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 46]

PROTECTION OF HUMAN SUBJECTS

Research Involving Prisoners and Notice of Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

Basic regulations governing the protection of human subjects involved in research, development, and related activities supported or conducted by the Department through grants and contracts were published in the FEDERAL REGISTER on May 30, 1974 (39 FR 18914). At that time, it was indicated that notices of proposed rulemaking would be developed to provide additional protection for subjects of research who may have diminished capacity to provide informed consent, including prisoners.

On July 12, 1974, the National Research Act (Pub. L. 93-348) was signed into law, thereby creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. One of the charges to the Commission was to identify the requirements for informed consent to participation in biomedical and behavioral research by prisoners. The Commission was also required to investigate and study biomedical and behavioral research conducted or supported under programs administered by the Secretary of HEW and involving prisoners to determine the nature of the consent obtained from such persons or their legal representatives before such persons were involved in research; the adequacy of the information given them respecting the nature and purpose of the research, procedures to be used, risks and discomforts, anticipated benefits from the research, and other matters necessary for informed consent; and the competence and the freedom of the persons to make a choice for or against involvement in such research. The Commission was further required to make such recommendations to the Secretary as it determined appropriate to assure that biomedical and behavioral research conducted or supported under programs administered by him met the requirements respecting informed consent identified by the Commission. Pursuant to Section 202(a)(2) of that Act, the Commission has transmitted its Report and Recommendations to the Secretary regarding research on prisoners. Pursuant to Section 205 of the Act, the Secretary is required to publish the Report and Recommendations as received from the Commission and is taking that action in this issue of the FEDERAL REGISTER. Since the Department has not yet completed its final review of this report, the views set forth in it are not necessarily those of the Department of Health, Education, and Welfare. The Department will be evaluating the Report during the comment period.

Written comments, data, views, arguments and inquiries concerning the Recommendations of the Commission may be sent to the Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014. To facilitate analysis of the comments, it would be appreciated if they were arranged by Recommendation number (5). Additional copies of this notice may be obtained by writing to the same address. All comments received will be available for inspection at Room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland, weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m. To assure full consideration, all comments should be submitted on or before March 15, 1977. After receipt and review of such comments, it is the intent of the Department to issue final rules, taking into consideration its earlier proposed rules (39 FR 30648, Aug. 23, 1974), this Report and Recommendations, and relevant comments submitted with respect to the earlier proposed rules and this Report and Recommendations.

Dated: November 26, 1976.

R. MOURE,
Acting Assistant Secretary for Health.

Approved: January 4, 1977.

MARJORIE LYNCH,
Acting Secretary.

NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

OCTOBER 1, 1976.

REPORT AND RECOMMENDATIONS: RESEARCH INVOLVING PRISONERS

TABLE OF CONTENTS

PREFACE

The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research was established under the National Research Act (Pub. L. 93-348) to develop ethical guidelines for the conduct of research involving human subjects and to make recommendations for the application of such guidelines to research conducted or supported by the Department of Health, Education, and Welfare (DHEW). The legislative mandate also directs the Commission to make recommendations to Congress regarding the protection of human subjects in research not subject to regulation by DHEW. Particular classes of subjects that must receive the Commission's attention include children, prisoners and the institutionalized mentally infirm.

The duties of the Commission with regard to research involving prisoners are specifically set forth in section 202(a)(2) of the National Research Act, as follows:

> The Commission shall identify the requirements for informed consent to participation in biomedical and behavioral research by * * * prisoners * * *. The Commission shall investigate and study biomedical and behavioral research conducted or supported under programs administered by the Secretary [DHEW] and involving * * * prisoners * * * to determine the nature of the consent obtained from such persons or their legal representatives before such persons were involved in such research; the adequacy of the information given them respecting the nature and purpose of the research, procedures to be used, risks and discomforts, anticipated benefits from the research, and other matters necessary for informed consent; and the competence and the freedom of the persons to make a choice for or against involvement in such research. On the basis of such investigation and study the Commission shall make such recommendations to the Secretary as it determines appropriate to assure that biomedical and behavioral research conducted or supported under programs administered by him meets the requirements respecting informed consent identified by the Commission.

This responsibility is broadened by the provision (section 202(a)(3)) that the Commission make recommendations to Congress regarding the protection of subjects involved in research not subject to regulation by DHEW, such as research involving prisoners that is conducted or supported by other federal departments or agencies, as well as research conducted in federal prisons or involving inmates from such prisons.

To carry out its mandate, the Commission studied the nature and extent of research involving prisoners, the conditions under which such research is conducted, and the possible grounds for continuation, restriction or termination of such research. Commission members and staff made site visits to four prisons and two research facilities outside prisons that use prisoners, in order to obtain first-hand information on the conduct of biomedical research and the operation of behavioral programs in these settings. During the visits, interviews were conducted with many inmates who have participated in research or behavioral programs as well as with nonparticipants.

The Commission held a public hearing at which research scientists, prisoner advocates and providers of legal services to prisoners, representatives of the pharmaceutical industry, and members of the public presented their views on research involving prisoners. This hearing was duly announced, and no request to testify was denied. The National Minority Conference on Human Experimentation, which was convoked by the Commission

in order to assure that viewpoints of minorities would be expressed, made recommendations to the Commission on research in prisons. In addition to papers, surveys and other materials prepared by the Commission staff, studies on the following topics were prepared under contract: (1) alternatives to the involvement of prisoners; (2) foreign practices with respect to drug testing; (3) philosophical, sociological and legal perspectives on the involvement of prisoners in research; (4) behavioral research involving prisoners; and (5) a survey of research review procedures, investigators and prisoners at five prisons. Finally, at public meetings commencing in January 1976, the Commission conducted extensive deliberations and developed its recommendations on the involvement of prisoners in research.

Part I of this report contains the recommendations as well as the deliberations and conclusions of the Commission and a summary of background materials. The nature and extent of research involving prisoners are described in Part II. The activities of the Commission and reports that were prepared for it are summarized in Parts III and IV, respectively. An appendix to this report contains papers, surveys, reports and other materials that were prepared or collected for the Commission on various topics related to research involving prisoners. Most of such materials that were prepared or collected for the Commission on various topics related to research involving prisoners. Most of such materials are summarized in Part IV of the report.

GLOSSARY OF TERMS USED IN THIS REPORT

Phases of drug testing. FDA regulations require three phases for the testing of new drugs. Phase I is the first introduction of a new drug into humans (using normal volunteers), with the purpose of determining human toxicity, metabolism, absorption, elimination and other pharmacological action, preferred route of administration and safe dosage range. Phase 2 covers the initial trials on a limited number of patients for specific disease control or prophylaxis purposes. Phase 3 involves extended clinical trials, providing assesment of the drug's safety and effectiveness and optimum dosage schedules in the diagnosis, treatment or prophylaxis of groups of subjects involving a given disease or condition. (Source: 21 CFR 312.1)

Prison. "Any place for the confinement or rehabilitation of juvenile offenders or individuals charged with or convicted of criminal offenses" (42 U.S.C. 3781).

Prisoner. Any individual involuntarily confined in a prison.

Theraupetic research, nontherapeutic research. The Commission recognizes problems with employing the terms "therapeutic" and "nontherapeutic" research, notwithstanding their common usage, because they may convey a misleading impression. Research refers to a class of activities designed to develop generalizable new knowledge. Such activities are often engaged in to learn something about practices designed for the therapy of the individual. Such research is often called "therapeutic" research; however, the research is not solely for the therapy of the individual. In order to do research, additional interventions over and above those necessary for therapy may need to be done, *e.g.*, randomization, blood drawing, catheterization; these interventions may not be "therapeutic" for the individual. Some of these interventions may themselves present risk to the individual—risk unrelated to the therapy of the subject. The Commission has employed the term "research on practices which have the intent and reasonable probability of improving the health or well-being of the subject" or variants of this term. Since the reports prepared for the Commission by outside contractors or consultants generally employ the terms in common usage, such terms have been retained in the summaries of those reports.

PART I. DELIBERATIONS, CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 1. DELIBERATIONS AND CONCLUSIONS

Introduction. Prior to 1940, prisoners in the United States seldom participated in biomedical research that had no reasonable expectation of improving the health or well-being of the research subjects. During World War II, however, large numbers of prisoners participated in voluntary research programs to develop treatment for infectious diseases that afflicted our armed forces. This involvement of prisoners was considered to be not only acceptable, but praiseworthy. Following the war, the growth of biomedical research and the imposition of requirements for testing drugs as to safety led to the increased use of prisoners. Their participation in biomedical research not related to their health or well-being has continued in this country to the present time. This participation is now primarily in phase 1 drug and cosmetic testing, which is conducted or supported by pharmaceutical manufacturers in connection with applications to the Food and Drug Administration for licensing new drugs. Other research of this sort in which prisoners participate, or have participated, includes studies of normal metabolism and physiology, conducted by the Public Health Service (PHS); studies of the prevention or treatment of infectious diseases, conducted or supported by the PHS and the Department of Defense; a study of the effects of irradiation on the male reproductive function, supported by the Atomic Energy Commission; and testing of the addictive properties of new analgesics by giving them to prisoners with a history of narcotic abuse, conducted at the Addiction Research Center in Lexington, Kentucky. (The involvement of federal prisoners in the Lexington program is scheduled to be phased out.[1])

Prisoners also participate in research on practices that have the intent and reasonable probability of improving their health or well-being. This research includes, for example, studies (supported by various components of DHEW and the Federal Bureau of Prisons) to develop methods to reduce the spread of infections, improve dental care, help the subjects stop smoking and remove tattoos. A major focus of this sort of research involving Federal prisoners has been the development of new treatments for narcotic addiction.

A third type of research in which prisoners participate includes studies of the possible causes, effects and process of incarceration, and studies of prisons as institutional structures or of prisoners as incarcerated persons. Components of DHEW have undertaken research of this sort for such purposes as learning the etiology of drug addiction and deviant or self-destructive behavior, and the factors relating to parole performance and recidivism.

Research is also conducted on the methods of treatment or "rehabilitation" of prisoners. The National Institute of Mental Health, the Federal Bureau of Prisons, and the Law Enforcement Assistance Administration have supported research on the experimental treatment of aggressive behavior with drugs and aversive conditioning techniques, as well as behavior modification based upon depriving inmates of basic amenities which they must then earn back as privileges. Rehabilitative practices have not always been based upon prior scientific design and evaluation, however, despite the fact that there are few, if any, approaches to the treatment or rehabilitation of prisoners for which effectiveness has been clearly demonstrated.

Outside the United States prisoners do not generally participate in biomedical research. This exclusion may be ascribed in part to continuing concern over experiments that were conducted on prisoners in Nazi concentration camps. Revelations of those experiments led to the enunciation of the Nuremburg Code (1946–1949), which required that human subjects of research "be so situated as to be able to exercise free power of choice" but did not expressly prohibit research involving civil prisoners. The Declaration of Helsinki, adopted by the World Medical Association in 1964 and endorsed by the American Medical Association in 1966, contained similar language that was subsequently deleted in 1975. Although little if any drug testing is conducted in foreign prisons, other kinds of research have been conducted in prisons throughout the world, such as studies dealing with the incidence and implications of chromosome abnormalities.

Since the 1960's, the ethical propriety of participation by prisoners in research has increasingly been questioned in this country. Among the events that have focused public attention on this issue was the publication of Jessica Mitford's book, Kind and Usual Punishment, in 1973. Eight States and the Federal Bureau of Prisons have formally moved to abandon research in prisons. The Health

[1] Letter dated March 1, 1976 to Honorable Robert W. Kastenmeier from Norman A. Carlson, Director, U.S. Bureau of Prisons.

Subcommittee of the Senate Committee on Labor and Public Welfare held hearings (Quality of Health Care—Human Experimentation, 1973) on research involving prisoners in late 1973. Those speaking against the use of prisoners cited exploitation, secrecy, danger and the impossibility of obtaining informed consent as reasons to impose a prohibition or moratorium on the conduct of research in prisons. The advantages of using prisoners in research (e.g., opportunity for close monitoring and controlled environment) and the procedures that are employed to protect prisoner participants were also described in the hearings. The Health Subcommittee held extensive hearings on other areas of human experimentation as well, and reported the bill establishing this Commission with a mandate that included a directive to study and make recommendations concerning the involvement of prisoners in research.

More recently, the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice held hearings (Prison Inmates in Medical Research, 1975) on a bill (H.R. 3603) to prohibit "medical research" in federal prisons and prisons of states that receive certain federal support. Following these hearings, the Director of the Federal Bureau of Prisons determined that "continued use of prisoners in any medical experimentation should not be permitted," and he ordered that such participation by prisoners under federal jurisdiction be phased out.

Some of the more extreme behavioral programs have also raised questions. In her 1973 book, Jessica Mitford expressed concern about new approaches to "treatment" for offenders. Concurrently, others raised questions about the use of psychosurgery in prisons. In the early 1970's, the first challenges to behavior modification and aversive conditioning programs in prisons were argued in the courts, with mixed results. Most of the cases involved the right to refuse to participate in such programs, although prisoners have also petitioned for the right to be included in programs designed to alter sexually aggressive behavior.

Concern over behavior modification programs in prisons was expressed in a study, Individual Rights and the Federal Role in Behavior Modification (1974), prepared by the staff of the Constitutional Rights Subcommittee of the Senate Judiciary Committee. The study contained information on a number of such programs and suggested that this Commission make use of the information in attempting to resolve the issues that they raised. It should be noted that a number of the "treatment" programs mentioned in the study are reported to have been discontinued.

General concerns. In conducting its investigations and studies, the Commission has noted and cannot ignore serious deficiencies in living conditions and health care that generally prevail in prisons. Nor can the Commission ignore the potential for arbitrary exercise of authority by prison officials and for unreasonable restriction of communication to and from prisoners. The Commission, although acknowledging that it has neither the expertise nor the mandate for prison reform, nevertheless urges that unjust and inhumane conditions be eliminated from all prisons, whether or not research activities are conducted or contemplated.

Ethical considerations about using prisoners as research subjects. There are two basic ethical dilemmas concerning the use of prisoners as research subjects: (1) whether prisoners bear a fair share of the burdens and receive a fair share of the benefits of research; and (2) whether prisoners are, in the words of the Nuremberg Code, "so situated as to be able to exercise free power of choice"—that is, whether prisoners can give truly voluntary consent to participate in research.

These two dilemmas relate to two basic ethical principles: the principle of justice, which requires that persons and groups be treated fairly, and the principle of respect for persons, which requires that the autonomy of persons be promoted and protected. Disproportionate use of prisoners in certain kinds of research (e.g., phase 1 drug testing) would constitute a violation of the first principle; closed and coercive prison environments would compromise the second principle. It is within the context of a concern to implement these principles that the Commission has deliberated the question of use of prisoners as research subjects.

The Commission recognizes, however, that the application of these principles to the problem is not unambiguous. To respect a person is to allow that person to live in accord with his or her deliberate choices. Since the choices of prisoners in all matters except those explicitly withdrawn by law should be respected, as courts increasingly affirm, it seems at first glance that the principle of respect for persons requires that prisoners not be deprived of the opportunity to volunteer for research. Indeed, systematic deprivation of this freedom would also violate the principle of justice, since it would arbitrarily deprive one class of persons of benefits available to others—namely, the benefits of participation in research.

However, the application of the principles of respect and justice allows another interpretation, which the Commission favors. When persons seem regularly to engage in activities which, were they stronger or in better circumstances, they would avoid, respect dictates that they be protected against those forces that appear to compel their choices. It has become evident to the Commission that, although prisoners who participate in research affirm that they do so freely, the conditions of social and economic deprivation in which they live compromise their freedom. The Commission believes, therefore, that the appropriate expression of respect consists in protection from exploitation. Hence it calls for certain safeguards intended to reduce the elements of constraint under which prisoners give consent and suggests that certain kinds of research would not be permitted where such safeguards cannot be assured.

Further, a concern for justice raises the question whether social institutions are so arranged that particular persons or groups are burdened with marked disadvantages or deprived of certain benefits for reasons unrelated to their merit, contribution, deserts or need. While this principle can be interpreted, as above, to require that prisoners not be unjustly excluded from participation in research, it also requires attention to the possibility that prisoners as a group bear a disproportionate share of the burdens of research or bear those burdens without receiving a commensurate share of the benefits that ultimately derive from research. To the extent that participation in research may be a burden, the Commission is concerned to ensure that this burden not be unduly visited upon prisoners simply because of their captive status and administrative availability. Thus it specifies some conditions for the selection of prisoners as a subject pool for certain kinds of research. In so doing, the Commission is not primarily intending to protect prisoners from the risks of research; indeed the Commission notes that the risks of research, as compared with other kinds of occupations, may be rather small. The Commission's concern, rather, is to ensure the equitable distribution of the burdens of research no matter how large or small those burdens may be. The Commission is concerned that the status of being a prisoner makes possible the perpetration of certain systemic injustices. For example, the availability of a population living in conditions of social and economic deprivation makes it possible for researchers to bring to these populations types of research which persons better situated would ordinarily refuse. It also establishes an enterprise whose fair administration can be readily corrupted by prisoner control or arbitrarily manipulated by prison authorities. And finally, it allows an inequitable distribution of burdens and benefits, in that those social classes from which prisoners often come are seldom full beneficiaries of improvements in medical care and other benefits accuring to society from the research enterprise.

Reflection upon these principles and upon the actual conditions of imprisonment in our society has led the Commission to believe that prisoners are, as a consequence of being prisoners, more subject to coerced choice and more readily available for the imposition of burdens which others will not willingly bear. Thus, it has inclined toward protection as the most appropriate expression of respect for prisoners as persons and toward redistribution of those burdens of risk and inconvenience which are presently concentrated upon prisoners. At the same time, it admits that, should coercions be lessened and more equitable systems for the sharing of burdens and benefits be devised, respect for persons

and concern for justice would suggest that prisoners not be deprived of the opportunity to participate in research. Concern for principles of respect and justice leads the Commission to encourage those forms of inquiry that could form a basis for improvement of current prison conditions and practices, such as studies of the effects of incarceration, of prisons as institutions and of prisoners as prisoners, and also to allow research on practices clearly intended to improve the health or well-being of individual prisoners.

The Commission has noted the concern, expressed by participants at the National Minority Conference and by others, that minorities bear a disproportionate share of the risks of research conducted in prisons. This concern is fostered, in part, by evidence that prison populations are disproportionately nonwhite. Evidence presented to the Commission indicates that where research is done in prison, those prisoners who participate tend to be predominantly white, even in institutions where the population as a whole is predominantly nonwhite; further, those who participate in research tend to be better educated and more frequently employed at better jobs than the prison population as a whole. This evidence suggests that nonwhites and poor or less educated persons in prison do not carry a greater share of the burdens of research.

However, the evidence is inconclusive for two reasons: first, because it does not fully satisfy questions related to the risks of research; and second, because it raises questions of justice with respect to the equitable distribution of benefits (as well as burdens) of research.

With respect to risks, the Commission notes that different research projects carry different risks; it is possible, though the Commission has no evidence to this effect, that one race or another may participate in more research of higher risk. And of course, the ratio of nonwhites to whites participating in research and hence bearing the burdens of research may still be disproportionate when compared to the ratio of the populations as a whole.

But the Commission also notes that those who participate in research consider the benefits sufficient to outweigh the burdens. Thus, the greater participation of whites may mean that there is an inequitable distribution of benefits between racial groups. Hence the greater participation by whites does not necessarily resolve the issue of distributive justice.

Similarly, the Commission notes that less research is conducted in women's prisons. While the reasons for this may well be the same reasons that women in general are used less frequently than men as research subjects (*e.g.*, the possibility of pregnancy), questions of distributive justice, similar to those raised above, may still need to be addressed with respect to participation in research by women prisoners.

Discussion. Among the issues discussed by the Commission are two on which no specific recommendations are made, but concerning which the considerations of the Commission should be expressed: (1) remuneration, and (2) alternatives to conducting research in prisons. (1) Remuneration is a subject that should be analyzed by human subjects review committees, in consultation with prison grievance committees and prison authorities. There are at least two considerations that must be balanced in the determination of appropriate rates for participation in research not related to the subjects' health or well-being. On the one hand, the pay offered to prisoners should not be so high, compared to other opportunities for employment within the facility, as to constitute undue inducement to participate. On the other hand, those who sponsor the research should not take economic advantage of captive populations by paying significantly less than would be necessary if nonprisoner volunteers were recruited. Fair solutions to this problem are difficult to achieve. One suggestion is that those who sponsor research pay the same rate for prisoners- they pay other volunteers, but that the amount actually going to the research subjects be comparable to the rates of pay otherwise available within the facility. The difference between the two amounts could be paid into a general fund, either to subsidize the wages for all inmates within the prison, or for other purposes that benefit the prisoners or their families. Prisoners should participate in managing such a fund and in detetrmining allocation of the monies. Another suggestion is that the difference be held in escrow and paid to each participant at the time of release or, alternatively, that it be paid directly to the prisoner's family.

A requirement related to the question of appropriate remuneration for participation in research is that prisoners should be able to obtain an adequate diet, the necessities of personal hygiene, medical attention and income without recourse to participation in research.

(2) Some of the Commission members endorse the alternative of permitting prisoners to participate in research provided it is conducted in a clinic or hospital outside the prison grounds, and provided also that nonprisoners participate in the same projects for the same wages. Other members of the Commission believe that such a mechanism would serve only to increase the disparity between the conditions within the prison and those within the research unit, thereby heightening the inducement to participate in research in order to escape from the constraints of the prison setting. All of the members of the Commission endorse the suggestion that the use of alternative populations be explored and utilized more fully than is presently the case. This may be especially important to permit drugs to continue to be tested, as required by current law and regulations of the FDA, during any period in which prisons have not satisfied the conditions that are recommended for the conduct of such research. Increased utilization of alternative populations would have the added benefit of providing nonprisoner populations to participate in research projects along with prisoners, or in parallel with similar projects within prisons, in order to satisfy the general concern that prisoners not participate in experiments that nonprisoners would find unacceptable. The Commission also suggests that Congress and the FDA consider the advisability of undertaking a study and evaluation to determine whether present requirements for phase 1 drug testing in normal volunteers should be modified.

Conclusions. In the course of its investigations and review of evidence presented to it, the Commission did not find in prisons the conditions requisite for a sufficiently high degree of voluntariness and openness, notwithstanding that prisoners currently participating in research consider, in nearly all instances, that they do so voluntarily and want the research to continue. The Commission recognizes the role that research involving prisoners has played. It does not consider, however, that administrative convenience or availability of subjects is, in itself, sufficient justification for selecting prisoners as subjects.

Throughout lengthy deliberations, the strong evidence of poor conditions generally prevailing in prisons and the paucity of evidence of any necessity to conduct research in prisons have been significant considerations of the Commission. An equally important consideration has been the closed nature of prisons, with the resulting potential for abuse of authority. Some of the Commission members, who are opposed to research not related to the health or well-being of prisoner-participants, have, however, agreed to permit it to be conducted, but only under the following standards: adequate living conditions, separation of research participation from any appearance of parole consideration, effective grievance procedures and public scrutiny at the prison where research will be conducted or from which prospective subjects will be taken; importance of the research; compelling reasons to involve prisoners; and fairness of such involvement. Compliance with these requirements must be certified by the highest responsible federal official, assisted by a national ethical review body. The Commission has concluded that the burden of proof that all the requirements are satisfied should be on those who wish to conduct the research.

CHAPTER 2. RECOMMENDATIONS

The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research makes the following recommendations on research involving prisoners, to:

(i) The Secretary, DHEW, with respect to research that is subject to his regulation, *i.e.*, research conducted or supported under programs administered by him and research reported to him in fulfillment of regulatory requirements; and

(ii) The Congress, except as otherwise noted, with respect to research that is not subject to regulation by the Secretary, DHEW.

Recommendation (1): Studies of the possible causes, effects and processes of

incarceration and studies of prisons as institutional structures or of prisoners as incarcerated persons may be conducted or supported, *Provided*, That (A) they present minimal or no risk and no more than mere inconvenience to the subjects, and (B) the requirements under recommendation (4) are fulfilled.

Comment. The Commission encourages the conduct of studies of prisons as institutions and prisoners as incarcerated persons. Because the inadequacies of the prisons may themselves be the object of such studies, the Commission has not set any conditions for the conduct of such research other than a limitation of this category to research that presents minimal or no risk and no more than mere inconvenience, and the requirements of Recommendation (4)

Studies of prisoners consisting of questionnaires, surveys, analyses of census and demographic data, psychological tests, personality inventories and the like rarely involve risk and are essential for proper understanding of prisons and the effects of their practices. Research designed to determine the effects on general health of institutional diets and restricted activity, and similar studies that do not manipulate bodily conditions (except innocuously, *e.g.*, obtaining blood samples) but merely monitor or analyze such conditions, also present little physical risk and are necessary to gain some knowledge of the effects of imprisonment. Such research is a necessary step toward understanding prison practices and alternatives, without which there can be no improvement.

Recommendation (2): Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the individual prisoner may be conducted or supported, provided the requirements under recommendation (4) are fulfilled.

Comment. Research would fall under this recommendation if the practices under study are designed solely to improve the health or well-being of the research subject by prophylactic, diagnostic or treatment methods that may depart from standard practice but hold out a reasonable expectation of success. The Commission intends that prisoners not be discriminated against with respect to research protocols in which a therapeutic result might be realized for the individual subject. The committees that review all research involving prisoners should analyze carefully any claims that research projects are designed to improve the health or well-being of subjects and should be particularly cautious with regard to research in which the principal purpose of the practice under study is to enforce conformity with behavioral norms established by prison officials or even by society. Such conformity cannot be assumed to improve the condition of the individual prisoner. If the review committee does not consider such claims to be sufficiently substantiated, the research should not be conducted unless it conforms to the requirements of Recommendation (3).

Recommendation (3): Except as provided in recommendation (1) and (2), research involving prisoners should not be conducted or supported, and reports of such research should not be accepted by the Secretary, DHEW, in fulfillment of regulatory requirements, unless the requirements under recommendation (4) are fulfilled and the head of the responsible federal department or agency has certified, after consultation with a national ethical review body, that the following three requirements are satisfied:

(A) The type of research fulfills an important social and scientific need, and the reasons for involving prisoners in the type of research are compelling;

(B) The involvement of prisoners in the type of research satisfies conditions of equity; and

(C) A high degree of voluntariness on the part of the prospective participants and of openness on the part of the institution(s) to be involved would characterize the conduct of the research; Minimum requirements for such voluntariness and openness include adequate living conditions, provisions for effective redress of grievances, separation of research participation from parole considerations, and public scrutiny.

Comment. Detailed standards expressing the intent of the Commission with respect to Requirement (C) of this Recommendation are as follows:

(i) *Public scrutiny.* Prisoners should be able to communicate, without censorship, with persons outside the prison and, on a privileged, confidential basis, with attorneys, legal organizations which assist prisoners, the accrediting office which assists the certifying federal official or national ethical review body, the grievance committee referred to in paragraph (ii) below, and the human subjects review committee or institutional review board referred to in Recommendation (4). Each of such persons or organizations with whom prisoners should be able to communicate on a privileged, confidential basis should be able to conduct private interviews with any prisoner who so desires. The accrediting office, grievance committee and human subjects review committee or institutional review board should be allowed free access to the prison.

(ii) *Grievance procedures.* There should exist a grievance committee composed of elected prisoner representatives, prisoner advocates and representatives of the community. The committee should enable prisoners to obtain effective redress of their grievances and should facilitate inspections and monitoring by the accrediting office to assure continuing compliance with requirement (C).

(iii) *Standard of living.* Living conditions in the prison in which research will be conducted or from which subjects will be recruited should be adequate, as evidenced by compliance with all of the following standards:

(1) The prison population does not exceed designed capacity, and each prisoner has an adequate amount of living space;

(2) There are single occupancy cells available for those who desire them;

(3) There is segregation of offenders by age, degree of violence, prior criminal record, and physical and mental health requirements;

(4) There are operable cell doors, emergency exists and fire extinguishers, and compliance with state and local fire and safety codes is certified;

(5) There are operable toilets and wash basins in cells;

(6) There is regular access to clean and working showers;

(7) Articles of personal care and clean linen are regularly issued;

(8) There are adequate recreation facilities, and each prisoner is allowed an adequate amount of recreation;

(9) There are good quality medical facilities in the prison, adequately staffed and equipped, and approved by an outside medical accrediting organization such as the Joint Commission on Accreditation of Hospitals or a state medical society;

(10) There are adequate mental health services and professional staff;

(11) There is adequate opportunity for prisoners who so desire to work for remuneration comparable to that received for participation in research;

(12) There is adequate opportunity for prisoners who so desire to receive education and vocational training;

(13) Prisoners are afforded opportunity to communicate privately with their visitors, and are permitted frequent visits;

(14) There is a sufficiently large and well-trained staff to provide assurance of prisoners' safety;

(15) The racial composition of the staff is reasonably concordant with that of the prisoners;

(16) To the extent that it is consistent with the security needs of the prison, there should be an opportunity for inmates to lock their own cells; and

(17) Conditions in the prison satisfy basic institutional environmental health, food service and nutritional standards.

(iv) *Parole.* There should be effective procedures assuring that parole boards cannot take into account prisoners' participation in research and that prisoners are clearly informed that there is absolutely no relationship between research participation and determinations by their parole boards.

If an investigator wishes to present evidence of the importance and fairness of conducting a type of research on a prison population (requirements (A) and (B)) and proposes that the conditions of voluntariness and openness would be satisfied at a particular prison (requirement (C)), the case should be presented to the Secretary, DHEW (or the head of any other department or agency under whose authority the research would be conducted). Such official should seek the advice of an existing or newly created advisory body (such as the Ethical Advisory Board established within the Public Health Service) in determining whether to approve the type of research at the specific institution. Such official or advisory body should be assisted by an accrediting office, which makes inspections, certifies compliance with re-

quirement (C), and monitors continuing compliance of any prison involved in research. In determining such compliance, the accrediting office should be guided by the above description of the Commission's intent in recommending requirement (C).

Recommendation (4): (A) The head of the responsible Federal department or agency should determine that the competence of the investigators and the adequacy of the research facilities involved are sufficient for the conduct of any research project in which prisoners are to be involved.

(B) All research involving prisoners should be reviewed by at least one human subjects review committee or institutional review board comprised of men and women of diverse racial and cultural backgrounds that includes among its members prisoners or prisoner advocates and such other persons as community representatives, clergy, behavioral scientists and medical personnel not associated with the conduct of the research or the penal institution; in reviewing proposed research, the committee or board should consider at least the following: the risks involved, provisions for obtaining informed consent, safeguards to protect individual dignity and confidentiality, procedures for the selection of subjects, and provisions for providing compensation for research-related injury.

Comment. The risks involved in research involving prisoners should be commensurate with risks that would be accepted by nonprisoner volunteers. If it is questionable whether a particular project is offered to prisoners because of the risk involved, the review committee might require that nonprisoners be included in the same project.

In negotiations regarding consent, it should be determined that the written or verbal comprehensibility of the information presented is appropriate to the subject population.

Procedures for the selection of subjects within the prison should be fair and immune from arbitrary intervention by authorities or prisoners.

Compensation and treatment for research-related injury should be provided, and the procedures for requesting such compensation and treatment should be described fully on consent forms retained by the subjects.

Prisoners who are minors, mentally disabled or retarded should not be included as subjects unless the research is related to their particluar condition and complies with the standards for research involving those groups as well as those for prisoners. (Recommendations concerning research participation of children and the institutionalized mentally infirm will hereafter be made by the Commission.)

There should be effective procedures assuring that parole boards cannot take into account prisoners' participation in research, and that prisoners are made certain that there is absolutely no relationship between research participation and determinations by their parole boards.

Recommendation (5): In the absence of certification that the requirements under recommendation (3) are satisfied, research projects covered by that recommendation that are subject to regulation by the Secretary, DHEW, and are currently in progress should be permitted to continue not longer than one year from the date of publication of these recommendations in the FEDERAL REGISTER or until completed, whichever is earlier.

PART II. BACKGROUND

CHAPTER 3. NATURE OF RESEARCH INVOLVING PRISONERS

Research activities involving prisoners may be divided into four broad categories: biomedical research not related to the health or well-being of the subject, biomedical research on practices intended to improve the health or well-being of the subject, social research, and behavioral research on practices intended to improve the health or well-being of the subject. The first category of research using prisoners mainly involves phase 1 testing of new drugs and testing of vaccines as to efficacy. Biomedical and behavioral research related to the health or well-being of the prisoner-participants generally involves the study of conditions associated with prisoners or prisons. In addition, innovative practices in prisons, intended to rehabilitate or treat prisoners, often have many attributes of behavioral research but are seldom introduced as such. The major controversy over participation of prisoners surrounds their use as subjects of biomedical research not related to their health or well-being and their unwilling involvement in experimental treatment or rehabilitative programs.

Biomedical research unrelated to the health or well-being of prisoner-participants was conducted in the United States only in isolated instances prior to the establishment in 1934 of a program at Leavenworth Prison to assess the abuse potential of narcotic analgesics; such research is now conducted at the Addiction Research Center in Lexington, Kentucky, although it was announced recently that the program will be terminated by the end of 1976. The current involvement of prisoners in biomedical research unrelated to their health or well-being can be traced to three sources. First, during World War II, prisoners volunteered in large numbers for studies, such as those to develop effective anti-malarial drugs, which were viewed as contributing to the national interest. Reviews of these prison research activities by several state commissions resulted in their endorsement. In fact, prisoner participation in research was felt to be such a salutary experience that the American Medical Association formally opposed allowing persons convicted of particularly serious crimes to have the privilege of participating in scientific experiments. Second, the enthusiastic support of biomedical research by the government and the public following the war brought an enormous growth to research enterprises, and prisoners served as subjects in many of these new endeavors. Third, the thalidomide experience was followed by pasage in 1962 of the Kefauver-Harris amendments to the Food and Drug Act, which established additional requirements for testing the safety and efficacy of all drugs to be sold in interstate commerce and thereby encouraged the continued use of prisoners in research. The phase 1 testing requirements established under these amendments required evaluation of the safety of new drugs in normal volunteers under controlled conditions, and prisoners became the population on which much of this testing was performed.

Innovative prison practices are often difficult to distinguish from what might be termed behavioral research on practices intended to improve the health or well-being of prisoner-participants. Since the early 1900's, innovations such as flexible sentences, indeterminate sentences, behavioral therapies during imprisonment, and parole and probation based on evidence of rehabilitation have been introduced into the prison system. These innovations have not generally included provisions for design, review and evaluation as research. Frequently, though, the behavioral programs have had many characteristics of behavior modification research. Examples range from use of "therapeutic community" and reinforcement techniques in prison, to use of aversive conditioning (employing electric shock or drugs with unpleasant effects) in treating sex offenders or uncontrollably violent prisoners, to use of a structured tier system (token economy) in which a prisoner progresses from living conditions of severe deprivation to relative freedom and comfort as a reward for socially acceptable behavior. At the extreme of research or treatment designed to change behavior were castration for sexual offenders and psychosurgery for uncontrollable violence.

The peak of enthusiasm for the application of behavior modification techniques in the prison system was marked by the establishment of the Special Treatment and Rehabilitation Training (START) program in the Federal Bureau of Prisons, and the planning of a new federal prison at Butner, North Carolina, with research in applying behavioral modification throughout a prison as its primary purpose. The START program was abandoned, after 1½ years of operation, under considerable criticism and after some challenges in court. Similar activities led to a reevaluation of the programs planned for Butner, which opened in May 1976. It now offers a variety of vocational and academic courses as well as general counseling. Participation in these programs is voluntary, and changes in the program content will be introduced only with the approval of both the inmates and the staff.

Social research and psychological testing are also conducted in prisons. Projects include studies of the factors which may contribute to criminal behavior (such as cytogenetic anomalies or socioeconomic and psychological stress), comparison of effectiveness of various rehabilitative programs in reducing recidi-

vism, psychological assessment of criminals as compared with noncriminal counterparts, tracking the outcome of judgments concerning "dangerousness," and evaluating standards for determining competency to stand trial.

Examples of biomedical research on practices intended to improve the health or well-being or subjects in prisons are studies to reduce the spread of infections in crowded environments or to develop new methods of treating drug addiction. Other research, which may or may not be intended to benefit subjects, includes investigations to increase understanding of the nature and causes of narcotic or alcohol abuse and addiction.

Research conducted or supported by DHEW. Information was made available to the Commission by the Public Health Service (PHS) regarding all biomedical research projects involving prisoners that were conducted or supported since January 1, 1970. In addition, the National Institute of Mental Health (NIMH) provided information on all behavioral research with prisoners that was conducted or supported since July 1, 1971. A summary of this information follows.

Biomedical research with prisoners was conducted or supported by five of the six PHS agencies, the exception being the Health Resources Administration. The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) reported conducting over 40 intramural research projects in its testing facility at the Addiction Research Center in Lexington, Kentucky. These studies involved a wide range of activities, such as developing methods for detecting drugs of abuse through urinalysis, studies of various properties of morphine and other narcotics, evaluations of methadone, studies of the effects of amphetamines, analysis of interactions of various drugs with narcotics, and assessment of the addictive or abuse potential and psychoactive effects of new drugs. ADAMHA also supported nine extramural studies involving prisoners, including studies of the XYY chromosome anomaly, assessment of clinical methods to predict episodic violence, study of the use of narcotic antagonists to treat addict inmates in a prison and in a work release program, and study of behavioral and biological correlates of alcoholism.

The Center for Disease Control reported three studies with prisoners; these involved vaccines and skin test studies for a parasitic disease. FDA conducted five studies with prisoners, all of which involved oral administration of a standard dose of a commercially available antibiotic (Penicillin or Tetracycline). FDA also supported three studies with prisoners (two evaluating skin sensitization by irritants and one studying cyclamates). In the Health Services Administration, research involving prisoners was conducted by physicians at one PHS hospital (13 studies of metabolic responses to prolonged bed rest) and by physicians and behavioral scientists at the Research Division, Bureau of Prisons (33 studies involving a wide range of activities, such as dental care, weight reduction and tattoo removal; many were behavioral and rehabilitative rather than biomedical in focus). Seven institutes of the National Institutes of Health reported support of a total of 19 research programs involving prisoners. This research included studies of vaccines (rubella, rubeola, cholera toxoid, influenza and other respiratory viruses, streptococcus), testicular cell function, treatment of sun-induced skin conditions, responses to infectious diseases (colds, cholera), pathogenesis of acne, and the effect of diet on blood pressure and lipids.

Behavioral research with prisoners conducted or supported by NIMH included psychological and social research studies of crime and delinquency, individual violence, institutionalization, and law-mental health interactions. Participation of prisoners as subjects in these studies was essential due to the nature of the inquiries. A small number of intramural studies conducted at St. Elizabeths Hospital were related to analysis of procedures used to determine competency to stand trial or assess dangerousness of criminally insane patients. Support was provided for 19 extramural studies, some of which had biomedical as well as behavioral components. This research included studies (1) to identify sources and patterns of criminal and delinquent behavior (the XYY syndrome, attitudes toward criminal behavior); (2) to develop, test or evaluate models for the prevention, treatment or remediation of criminal behaviors (prediction of violence, lithium treatment for aggressive behavior, impact of imprisonment on the families of black prisoners, perceptions of the minority prison community, effects of prison environment stress on physical and mental health of inmates and staff); and (3) to define and analyze critical issues in law and mental health interactions (due process in determination of criminal insanity, assessment of adequacy of treatment for offenders committed to mental institutions, release of dangerous mental patients, the impact of a "dangerousness" standard as the sole criterion for involuntary commitment). In addition, NIMH has been directed by Congress to study the factors contributing to homosexual rape in prisons.

CHAPTER 4. EXTENT OF RESEARCH INVOLVING PRISONERS

The Commission obtained information from all fifty states and the Federal Bureau of Prisons on the policies of each toward research involving prisoners and whether or not research, if permitted, is being conducted. Also, the Pharmaceutical Manufacturers Association surveyed its members to assess the extent of pharmaceutical research involving prisoners. These surveys do not document what is generally considered to be a significant amount of social and behavioral research conducted by scholars and by the prison system itself.

Research in state and federal prisons. To ascertain the status of state laws, regulations and policies governing research involving prisoners, and to determine where such research is being conducted, state correctional agencies and the Federal Bureau of Prisons were surveyed during the summer of 1975. The following information is based on the reports received at the time from the state-wide agencies and the Bureau of Prisons. It should be noted that the policies and research activities of county and municipal jails were not surveyed.

1. Of the 21 states that permit biomedical research and the 23 states that permit behavioral research in prisons, studies are being conducted in the state prisons of only seven and five states, respectively.

2. Of the seven states in which biomedical research is conducted, all of the programs are unrelated to the health or well-being of the subjects and primarily involve drug and cosmetic testing.

3. Of the five states in which behavioral research is conducted, all of the programs are characterized as therapeutic in four states, and both therapeutic and nontherapeutic research (so characterized) in one state. No state reported conducting research programs involving behavior modification.

4. Eight states prohibit biomedical research: one by legislation, six by departmental policy, and one by moratorium; twenty-two have no specific policy.

5. Five states prohibit behavioral research: one by legislation, three by departmental policy, and one by moratorium; twenty-three have no specific policy.

6. Research is being conducted only in states that have specific legislation or departmental policies permitting and regulating it.

7. Information provided by the Federal Bureau of Prisons indicated that both biomedical and behavioral research are permitted by departmental policy. Biomedical research (limited to addiction research at Lexington) and behavioral research projects are being conducted.[3]

Participation of prisoners in pharmaceutical testing. The Pharmaceutical Manufacturers Association conducted a survey of its members to ascertain the extent to which they used prisoner volunteers as subjects for drug testing in 1975, with the focus primarily on phase 1 studies. Fifty-one companies, representing three-fourths of the members' annual expenditures for research and development, responded to the survey. Sixteen of the 51 used prisoners as subjects.

Of these 16 companies, 14 conducted phase 1 drug research with prisoners, employing a total of nearly 3600 prisoners in 100 protocols studying 71 substances. For nine companies, phase 1 testing represented their only use of prisoners as subjects. The percentage of phase 1 testing subjects who were prisoners ranged from 100% (one company) to 2%, with a median of 50% (an

[3] In March 1976, the Director of the Federal Bureau of Prisons announced that all biomedical research in federal prisons would be discontinued.

average could not be calculated from the data given). The companies listed a total of eight state and six county or municipal prisons as research sites. Ten companies used only minimum security prisons. No companies used detainees in their research. Other categories of volunteer subjects which the companies reported using in phase 1 studies included college students, medical students, company employees, residents of foreign countries, military personnel, members of fraternal organizations, medical personnel, and the general population.

Thirty-three of the 51 companies indicated that they had insurance policies or other mechanisms for compensating subjects who might be injured in research. (There was no determination of the extent to which such policies or other mechanisms would provide compensation in the absence of legal liability.)

PART III. ACTIVITIES OF THE COMMISSION

CHAPTER 5. SITE VISITS TO PRISONS

The Commission made a site visit to the State Prison of Southern Michigan at Jackson on November 14, 1975. In addition, groups of Commission members visited Washington State Penitentiary in Walla Walla, the Michigan Intensive Program Center at Marquette, and the California Medical Facility at Vacaville. Prior to the visits, Commission members were briefed by a former prison administrator, a former prisoner, and a director of research from a pharmaceutical manufacturing firm, regarding conditions to look for and questions that might be asked.

The *State Prison of Southern Michigan at Jackson* is the largest penitentiary in the United States, housing over 5000 residents. It is also the site of one of the largest nontherapeutic biomedical research operations, with special buildings on the grounds constructed by two pharmaceutical manufacturers (Parke-Davis and Upjohn) specifically to conduct phase 1 drug studies.

Commission members toured the prison facilities, including regular and honor cellblocks, prison industries, the prison infirmary, and the research buildings. They discussed prison procedures with the deputy warden, and research procedures with the vice-chairman of the committee that reviews each research protocol and with members of the research teams. Most of their visit was devoted to discussion of prison conditions and the research program with prisoners.

According to materials made available to the Commission, the research conducted at Jackson is primarily phase 1 drug testing, although some phase 2 studies and device testing are also performed. Research protocols must be reviewed and approved by the Protocol Review and Protection Committee (composed of five physicians in the community and at Michigan medical schools, two lawyers and a third lay member) and by the Director of the Department of Corrections. Annual reports of research performed are made to the Review and Protection Committee and the Department; any adverse reactions that occur are reported to the Committee immediately.

Information about the research program is included in the packet of information an inmate receives upon entering the prison; there is no additional recruitment or contact with the prisoners by the research personnel unless he requests information about participation. Then the program is described to him in a group meeting, and if he wishes to be considered for research he undergoes a physical examination and laboratory screening tests. Eligibility is contingent upon approval of the prison authorities and passing the screening tests; in addition, subjects must have an IQ of at least 70.

Those who qualify enter a common subject pool maintained for the two companies on a card file. When a new protocol is initiated, prisoners' cards are pulled from the front of the file, and the specific protocol is described to them. If they decline to enter the study, they reenter the pool. The studies are about equally divided between inpatient and outpatient trials. Pay is based on the procedures involved, according to a schedule devised by the Protection Committee and approved by the Department of Corrections, and is comparable to pay received in prison industries. Of the 5200 prisoners at Jackson, approximately 800 are in the research subject pool. The Commission was advised that medical supervision is close, that a physician is present or on call in the immediate vicinity at all times, that a prisoner can at any time,[*] and that no notation of his participation in research is made in his official prison record, so that the parole board is not advised of it.

Commission members talked with a representative sample of 80 prisoners both individually and in groups. The sample was selected by Commission staff from the master list of all prison residents, and included both research participants and nonparticipants who responded to an invitation to meet with the Commission. In addition, prisoners suggested by other inmates were interviewed in a group setting. Overall impressions from this experience were that prisoner-participants valued the research opportunity. In general, they felt that they were free to volunteer for or withdraw from the program at will and were given adequate information about research protocols. Nonparticipants expressed various reasons why research was not for them, but did not object to its being available for others.

Participants gave many reason for volunteering for research, including better living conditions, need for a good medical evaluation, and desire to perform a worthwhile service to others, but it was clear that the overriding motivation was the money they received for participating. In fact, their strongest objection was that they pay for participation in research was held down to levels comparable to prison industries. Other complaints focused on limitations to participation rather than on research excesses: if a prisoner stayed on an inpatient study for more than a week, he would lose his prison job seniority; prison officials were said to exclude certain prisoners arbitrarily; some prisoners did not seem to get called to participate in research as often as others. They generally rejected the notion that they were coerced into participating in research, and stated they know their participation would not be revealed to the parole board.

The major complaints of the participants were directed toward the prison system, not the research program. When asked if research in prisons should be stopped, the prisoners interviewed unanimously said no. They urged correction of what they viewed as inequities (*e.g.*, that pay be increased, that authorities be forbidden arbitrarily to withhold permission to participate), but asked that biomedical research programs in prisons be allowed to continue.

As a follow-up to the visit to Jackson, the Commission staff compared the characteristics of the 792 men in the drug-testing pool on November 27, 1975 with a randomly selected control sample of similar size. Data came from a computer print-out of the prison's daily roster. Subjects were disproportionately white; although blacks comprise almost 68% of the nonsubject prison population, they are only about 31% of the subject pool. (Data furnished to the Commission by Dr. William Woodward of the University of Maryland showed a similar inverted racial pattern in the biomedical research program at the Maryland House of Corrections at Jessup.) At Jackson, subjects tended to be older than nonsubjects, to have been in prison much longer (an average of almost two years, compared to one year for nonsubjects), and to have been sentenced to Jackson more times (2.1 times compared to 1.8 times for nonsubjects). There was also a striking over-representation among the subjects of men housed in the prison's two honor blocks.

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In order to observe behavioral programs operating in a prison setting, groups of Commission members visited a unit of the Washington State Penitentiary at Walla Walla and the Michigan Intensive Program Center at Marquette. Neither program is conducted as research, and the Commission is not aware of a behavior modification program in a state or federal prison that is so conducted at present.

The program at Walla Walla utilized a therapeutic community approach, and dealt with the state's most difficult-to-manage prisoners, who were sent to the unit generally because of unacceptable conduct in the regular system. The unit is operated almost entirely by the prisoners themselves, who serve as the therapeutic community, establishing and en-

[*] A consent form provided as a sample for review contained a contrary implication. The drug company representatives readily acknowledged that this was a mistake, however, and they gave assurances that the form would be corrected.

forcing rules of conduct. On entering the program, a prisoner is placed in an isolation cell. His only contacts are visits by the director and other prisoners on the unit, who explain the rules to him and urge him to conduct himself in such a way as to be able to join them. When he is willing to conform, he is released from his cell to the open ward. There, the main emphasis becomes retraining in appropriate patterns of social interaction, using such mechanisms as group discussions of current events, recreational programs, and group therapy. Swearing, use of jargon, and fighting are among the numerous forbidden behaviors; violations are punished by a return to the isolation cell, with the group serving as enforcer of the rules and determining when the violator can return to the ward.

The primary purpose of the Walla Walla program is to encourage learning of socially acceptable behavior rather than specifically to prepare the prisoners for return to the outside world or the regular prison system. Most men remain on the unit for long terms. Those who have been released outside the prison are said to have done remarkably well, with recidivism a rare event (follow-up records are apparently not maintained). Return to the regular prison system would be dangerous, since those in the program gain reputations as informers. Interviews with prisoners in the program yielded only the highest praise for it. Prisoners admitted initial resentment of the isolation treatment, but claimed that it was the only way they had ever been made to think seriously about themselves and their behavior, and that it provided the necessary impetus for their behavior change.

The *Michigan Intensive Program Center (MIPC) at Marquette* is a maximum security facility housing difficult-to-manage prisoners who have been transferred from other facilities in the state. The behavioral program there is based on a six-level token economy. Privileges and comforts increase as a resident earns enough tokens to progress from the lower to the higher levels. Tokens are earned for correct behavior (making the bed, cleaning the cell, attending educational activities, not fighting, etc.) and are awarded at frequent intervals throughout the day. The purpose of the program is to improve the prisoners' behavior sufficiently to enable him to return to the regular prison system and be manageable there.

Interviews with prisoners at the MIPC indicated no enthusiasm for the program The prisoners seemed to tolerate it grudgingly and submit to the process in order to get back into regular prison life, but with the determination that nothing done to them in the program was really going to change their behavior. They generally viewed the program as "just another lock-up," no better or worse than the segregation blocks to which they might have been assigned alternatively. Their major objection was the arbitrariness by which the prison system could decide to send them to the MIPC. No figures were available on recidivism, nor was there any other means to document the effectiveness of the program.

Commission members also visited the California Medical Facility at Vacaville, which houses approximately 1,400 inmates. Most of the prisoners are referred to Vacaville for medical or psychiatric reasons, and one-fourth of the population is excluded from particiaption in research for security reasons. Those who wish to volunteer sign a roster at the research office, and selection of subjects is made in numerical order from this list.

Research conducted at Vacaville includes a large program of skin-testing for hypersensitivity, as well as internal administration of experimental drugs. New volunteers begin with a skin-test study before advancing to higher paying pharmaceutical studies.

Other paying prison jobs are available, and at the time of the visit there were unfilled slots for reasons that were unclear but possibly had to do with disparity in pay or difficulty of the work as compared with participation in research. Legal counseling is available from law students who visit the prison weekly. Educational programs range from elementary school through a baccalaureate degree. There is spot censorship of mail. Telephones are available, but the inmates must pay to use them.

The inmates' council reviews all research projects and can veto any protocol. Most of the active protocols have also been reviewed by Institutional Review Boards of outside institutions. Informed consent is obtained in writing, and the prisoner receives a copy of the signed form. Examination of a card file indicated a significant dropout rate from studies; apparently prisoners feel free to withdraw, even though they know that if they do so frequently, their chances of being invited to participate in future studies will be reduced.

CHAPTER 6. NATIONAL MINORITY CONFERENCE ON HUMAN EXPERIMENTATION

In order to assure that minority viewpoints would be heard, the Commission contracted with the National Urban Coalition to organize a conference on human experimentation. The conference was held on January 6–8, 1976, at the Sheraton Conference Center, Reston, Virginia. Attended by over 200 representatives, it provided a format for presentations of papers and workshop discussions from which a set of recommendations emerged. The papers and the recommendations relevant to prison research are summarized below.

Joyce Mitchell Cook, Ph.D. Dr. Cook suggests that ethically acceptable research may be assured by a principle of equality (i.e., that researchers not propose experiments which they or members of their family would not participate in). She argues that the term "informed consent" is ambiguous, since it wrongly places the emphasis upon process and information rather than on voluntariness. Dr. Cook adopts the position that volunteering is genuine only if the end to be pursued is one to which the volunteer is devoted. Because of the extraneous motives of prisoners, she concludes that they are volunteers in name only. She recommends that behavioral research be permitted only if it directly benefits the participants and can be conducted on hospital wards rather than in prisons. Dr. Cook concludes that experimentation on prisoners ought to be abolished and that the risks of experimentation should be distributed more equally among members of the free-living world.

Larry I. Palmer, J. D. Mr. Palmer begins with the premise that the ethical problems posed by prison experimentation derive from racial, religious and nationalist conflicts and that the issues of prisoners and race are merged. He recommends guidelines to encourage scrutiny of: (1) The appropriateness of using prisoners in a particular protocol, (2) the societal priorities associated with the research, and (3) the potential risks and procedures to minimize such risks. He suggests that research involving prisoners might be regulated by state officials, with additional monitoring and scientific evaluation by professionals and some supervision of the consent process. All decisions and consequences regarding experimentation in prisons should be open to public scrutiny. Mr. Palmer sees little justification for a ban on all research in prisons; rather, he advocates a "scrutiny of values," through a statement of the nature, purposes and risks of each protocol in relation to the interests of the prison population.

L. Alex Swan, Ph.D., LL.B. Dr. Swan argues that behavioral research is aimed at quelling dissident prisoners who view their incarceration in political and economic terms. He suggests that such research ought instead to promote "human liberation" by exposing oppressive conditions in prison. He advocates self-determination for prisoners, particularly with regard to the goals of social and behavioral research, and challenges social and behavioral scientists to accept responsibility for the possible misuse of their research findings. Dr. Swan asserts that scientific manipulation of prisoners to conform to the will of the state is unethical, just as it is unethical to use scientific techniques for disciplinary or punitive purposes. He further states that experimentation on the brain to alter behavior violates the inmate's independence and right to free speech, that the prison system is so inherently coercive that informed and voluntary consent is impossible, that labeling of prisoners as aggressive or violent for research purposes is dishonest and repressive, and that civil liberties are endangered by behavior modification techniques in prisons because of the closed nature of such institutions.

Recommendations of minority conference workshops on research involving prisoners. Two workshops were devoted to the topic of research involving prisoners. The first of these recommended a moratorium on all nontherapeutic biomedical research in prisons until a comprehensive evaluation of human experi-

mentation has been made. This evaluation should include consideration of the purpose of research involving prisoners, criteria for selection of subjects, assessment of risks, government responsibility for regulating research in prisons, responsibility of professional organizations regarding such research, the role of prisoners in the supervision of the research, the fixing of financial responsibility including compensation for harm resulting from research, and access of prisoners to official bodies outside the prison. The workshop also recommended that behavioral research be redirected from a focus on the individual prisoner to the goal of understanding the nature of prisons and their effects on individual prisoners. Recommendations were not proposed regarding informed consent because of doubts that it is possible to obtain informed consent in our prisons.

The second workshop recommended the establishment of a permanent commission to regulate human experimentation, a ban on biomedical research and psychosurgery in prisons, establishment of a human subjects review committee with prisoner representation, and the provision of technical and legal resources to prisoners who are potential subjects of human experimentation.

CHAPTER 7. PUBLIC HEARING

On January 9, 1976, the Commission conducted a public hearing on the issue of research involving prisoners. Summaries of the presentations that were made to the Commission follow.

Gabe Kaimowitz (Senior Staff Attorney, Michigan Legal Services) suggested that researchers assume that there is informed consent, and that they often fail to use adequate control subjects, particularly in behavioral research. Further, investigators may limit public access to information about prison research projects. He stated that they often use captive populations without considering the availability of community volunteers, and too often apply medical or psychological models inappropriate to economic and social problems. Prisoners are in an inherently coercive environment, and their consent to research is always suspect. Mr. Kaimowitz is not opposed to therapeutic biomedical or behavioral research when the prisoners themselves request its implementation. In such situations a review committee should examine the conditions that caused the prisoners to make such a request.

Matthew L. Myers (National Prison Project of the American Civil Liberties Union Foundation) stated that informed consent is not feasible in the prison environment. Regardless of prison policy concerning participation in research and parole, prisoners may believe that involvement contributes to early release. They may also participate to escape from the routine of prison life or to earn money for necessities. Mr. Myers said that most medical experimentation is conducted in medium or maximum security facilities in which conditions are oppressive, alternatives are few, and there is a potential for abuse due to the closed, isolated and coercive nature of the prisons.

William R. Martin, M.D. (Director, Addiction Research Center, National Institute on Drug Abuse, DHEW) stated that addiction research is important and necessary both for society and for the prisoners. Limiting such research will retard development of therapy for addicts and will prohibit the evaluation of the addictive properties of new analgesics. Research participation is beneficial to most prisoners, he said, in that it is generally a safe and constructive experience, often improves health, and is a source of pride. Dr. Martin has been unable to identify any other population in which such studies can be done as validly and safely as in prisoners. He feels that prisoner participation may be altruistic, and therefore society should compensate participants for their involvement and for any injuries that may occur. There is empirical evidence that prisoners can and do make informed judgments, and are equally knowledgeable about research programs as other subjects. Practical measures can be taken to minimize the seductiveness of the research setting compared to the prison environment.

Theodore Francis (Occupational Drug Use Program, New York State Office of Drug Abuse Services) urged that biomedical and behavioral research in prisons continue, but that more attention be paid to compensation, the level of health care provided to subjects, and review of behavioral research. Participation of prisoners should be judged an acceptable means of earning money, and inmates should be reimbursed according to discomforts and risks incurred. Money earned should be held in escrow for prisoners until release or paid to their families. A national board should review all behavior modification research for efficacy, validity, and risks to individuals and to the community. This board would issue public notices in lay language, describing dates and place of the research, as well as the reimbursement provisions.

Michael S. Lottman (Commission on the Mentally Disabled, American Bar Association, and the National Association for Retarded Citizens) urged that special care be given to protecting the rights of mentally disabled prisoners. Thereafter, testifying as an individual, he opposed nontherapeutic biomedical research on prisoners which exposes them to risk of discomfort, pain or incapacity. He stated that the coercive and oppressive nature of penal institutions precludes obtaining voluntary informed consent. Prisoners are not physiologically unique and therefore provide no information which cannot be gained from a free population. Research on prisoners benefits drug companies and researchers, he said. If research is to continue in prisons, particular care should be given to protecting the rights of mentally retarded prisoners, and an independent body should certify that each subject can and has given informed consent. Mr. Lottman is not opposed to therapeutic biomedical research in a prison setting, provided there are proper controls and consent procedures.

Joseph Stetler (President, Pharmaceutical Manufacturers Association) stated that to the best of his knowledge no prisoner has died or been permanently injured from research sponsored by drug companies. He advocated continuation of drug research in prisons provided that: (1) researchers are qualified, (2) facilities are adequate, (3) participation is voluntary and informed, (4) research is monitored, and (5) prisoners are compensated fairly. He stated that prisons are practical and safe for drug testing, and that discontinuance of such research might delay development of new drugs. He estimated that 85% of all phase 1 drug testing is done on prisoners, and that the rate of compensation could increase substantially and still be insignificant relative to the total cost of new drug development. Prisoner testing of cosmetics or over-the-counter drugs is minimal relative to research involving prescription medications. A 1975 policy statement of PMA on the conduct of clinical research was summarized.

Allan H. Lawson (Executive Director, Prisoners' Rights Council of Pennsylvania) held that prisoners should be permitted to participate in experimentation only if the decision is absolutely voluntary. This is impossible in today's prisons, he said, because of economic pressures, forced idleness and inhuman conditions. In his view, research programs provide an excuse to prison administrators to neglect responsibilities such as housing, medical care and job programs. Because of the reality of economic pressures, the Prisoners' Rights Council would permit some research in prisons provided safeguards are instituted, until other means of earning money are available. However, the Council would ban research which involves exposure to incurable diseases or is otherwise dangerous or unnecessary. Mr. Lawson urged that medical care and compensation be provided for inmates injured during research.

The Reverend Americus Roy (Prisoners Aid Association of Maryland, Inc.) testified against medical experimentation in prisons based on personal experience at the Maryland House of Corrections. Prisoners participate in research, he said, because of economic deprivation and as a temporary escape from inhuman conditions. Use of prisoners is exploitative of the economically depressed. Risks of research should be widely distributed, especially among those who are likely to benefit.

PART IV. REPORTS TO THE COMMISSION

CHAPTER 8. PHILOSOPHICAL PERSPECTIVES

Papers on the ethical issues involved in research with prisoners were prepared for the Commission by Roy Branson, Ph. D., Cornel Ronald West, M.A., and Marx W. Wartofsky, Ph. D.

Dr. Branson first analyzes the ethical principles underlying the standard arguments for and against research involving prisoners, and, secondly, examines several policy alternatives. He concludes by recommending a moratorium, appealing

to the principles of free and informed consent and justice.

In reviewing arguments for experimentation, Dr. Branson cites three justifications generally advanced in support of research involving prisoners: (1) That it contributes to the good of society; of which prisoners are members and therefore recipients of benefits; (2) that it is an appropriate way for prisoners to make reparation; and (3) that prisoners can, in fact, give free and informed consent. A varient of the third argument is that criminal conviction presupposes competence and responsibility; therefore, prisoners must be presumed to have the capacity to volunteer. In fact, advocates of this position point out that prisoners are permitted to choose work in hazardous industries and so should be permitted to choose work as research subjects as well.

Opponents of prison research assume that experimentation is different from other occupations. A person's relationship to his body is not his relationship to his goods. A person's body, in a special and real sense, is the person. In experimentation risk to bodily integrity is primary to the activity, whereas in other occupations, the risk is secondary.

The two fundamental principles to which opponents of experimentation appeal are free and informed consent and justice. Those citing consent can say that prisoners cannot in principle give free consent because of the inherent nature of prisons as coercive, total institutions. Other opponents appealing to free consent do not go so far. They claim that sufficiently free consent to experimentation cannot in fact be given in American prisons. They cite not only the coercive structure of prisons, but such administrative features as limited alternative to earn money in prisons (none for equivalent rates of pay), and indeterminate release dates with nonobjective or unknown conditions for leaving the prison. Dr. Branson identifies himself with the second position, saying that empirical analyses leave a serious and reasonable doubt that inmates of American prisons can in fact give a sufficiently free consent to experimentation.

Justice is the other principle to which opponents of prisoner experimentation appeal. Injustice can take the form of injury, when a person is wrongfully harmed through exploitation or negligence by others. Injustice can also result from failure to follow the basic requirement of distributive or comparative justice: that like cases are to be treated alike and different cases be treated differently. Since prisoners are in relevant respects equal to free persons, the burdens of risk and harm should be proportional to those of free-living citizens, which would entail a significant reduction in at least phase 1 drug trials. On the other hand, prisoners are unequal to free persons in important respects in that they have been placed in total institutions. Dr. Branson, citing comparative justice, says the similarities of prisoners to free persons requires that the proportion of experimentation utilizing prisoners should be reduced. The differences between experimentation conducted on prisoners and those conducted on free persons require that prisoner experimentation be stopped, at least until conditions change.

In applying principles to policy alternatives, Dr. Branson sees remuneration as a major and finally insurmountable practical obstacle to prisoner experimentation. The principle of informed consent dictates that in order for prisoners to give consent that is not coerced, they should not be paid more for experimentation than for other prison jobs. But the principle of justice requires that rates of remuneration to prisoners should be equivalent to the rates paid to free volunteers. Schemes relying on committees of prisoners (or prisoners and prison officials) controlling funds created by the difference between the standard amount paid by drug companies and what an individual prisoner received run into practical problems, for the committee itself could manipulate and coerce prisoners.

Dr. Branson's recommendation, therefore, is that the Commission declare a moratorium on prison research and suggest that if and when conditions in American prisons have improved, then research might be resumed in those facilities which can meet the requirements of informed consent and justice. He would not preclude the possibility of offering innovative therapy to an individual inmate in need of treatment, but this, he says, should be distinguished from programs of "therapeutic research" which blur the distinction between individual therapy and experimentation. He suggests, in addition, that the moratorium extend to behavioral research, since new vehavioral therapies may be evaluated first on nonprisoners, but that observational research (noninterventional behavioral research), as well as educational programs, be permitted to continue.

Mr. West advocates a contractual approach to human experimentation which requires full disclosure, written consent and choices that are rational. These requirements reflect the human rights to know, to choose and to be treated fairly. He distinguishes between coercion (which involves threats) and bribery (which involves manipulation of incentives). Mr. West considers requests for prisoners to participate in research to be bribery, not coercion; hence, choice is at play. The paucity of alternatives and the conditions of domination within prisons, however, undermine the rational basis for such choice. Mr. West concedes that a certain degree of control over prisoners might be warranted, but only to the extent that basic human rights are not violated. The necessity for such control, he believes, suggests that prisoners are less appropriate subjects for research than are nonprisoners. Therefore, he urges that normal volunteers be recruited, instead; but he cautions against shifting the burden of research to Third World populations.

Mr. West views behavioral research in prisons to be nontherapeutic, inasmuch as the rehabilitative efficacy of behavior modification programs has not been demonstrated. Thus, he would restrict such research according to the same principles he applied for nontherapeutic biomedical research.

Mr. West recommends termination of both nontherapeutic biomedical and "therapeutic" behavioral research involving prisoners until such time as prison reform creates the conditions necessary for their legitimate participation in such research.

Dr. Wartofsky begins his essay on selling the services of one's body for research by discussing the extent to which being a subject is similar to other forms of wage-labor. He examines the nature of that which is being sold (and bought) and the extent to which a person has the right to offer his or her body in exchange for money. His position is that whereas one may not sell one's body, as such, nevertheless one may sell the disposition over the use of one's body for specified purposes, for a specified time and under specified conditions. In other words, while one's life and liberty are inalienable rights (which cannot be separated from one's person and sold), one's services or capacities are commodities which, in our free-market social and economic system, are regularly exchanged for wages.

Dr. Wartofsky then considers the problem of risk-taking. In general, he says, no ethical question arises concerning the risks inherent in dangerous occupations, since the workers are seen as having free choice in undertaking or refusing such jobs, and the risks involved are secondary to the needs of society which the occupations (e.g., coal mining, construction work, chemical manufacturing) are designed to meet. By contrast, the nature of risk in research is such that one is placing one's health or well-being at risk not as a by-product of some other purpose, but as the primary commodity; and it is the intimacy of the relation between one's person and one's well-being which makes the exchange disturbing.

With respect to motivation, Dr. Wartofsky observes, it is generally assumed that placing oneself at risk for monetary gain is for one's own benefit, whereas doing it without tangible reward is more altruistic. However, he points out that one may place oneself at risk for monetary gain and, at the same time, be self-sacrificing (if, for example, the purpose is to support one's family or otherwise satisfy the needs of others). Whether working for the abstract "good of society" is a higher motive than working for one's family is a question which cannot be settled. Thus, he concludes, motivation should be considered (if at all) only to the extent that the seriousness of the motivation should be commensurate with the degree of risk to be undertaken.

Next, he considers the extent to which prostitution is like wage-labor, involv-

ing, as it were, the sale of a disposition over one's body for a certain purpose, at a certain rate and for a certain time. The relevance of the inquiry lies in the fact that what is being bought and sold in prostitution is (just as in participation in research) something which is "so intimate to one's person that there is something disturbing in the notion that it is alienable, as a commodity." In his view, the ethical objections to prostitution, and to being a paid research subject, derive from the translation of relations which are supposed to express fundamental aspects of humanity into an economic exchange. In the paid research context, both the investigator and the subject are reducing an essential human capacity (putting oneself at risk for others) to a commodity; so doing, they may dehumanize each other.

Here, he observes, society is faced with a dilemma: on the one hand, research with human subjects is important for the preservation and well-being of the species; on the other hand, the only means of conducting such research is ethically questionable. He sees three obvious solutions: (1) To stop paying the subjects; (2) to conduct only that research which can be carried out with unpaid volunteers; and (3) to restructure society in order to eliminate the economic need which induces (or coerces) the disadvantaged into making up the largest portion of paid research subjects. All of these "solutions," however, are impractical. The pragmatic solution which he recommends, therefore, is to minimize the exploitive elements which "commodify" the situation. An alternative would be to follow the model proposed by Hans Jonas in which the most valuable members of society (rather than the most expendable) undertake the risks, but Dr. Wartofsky considers this also to be impractical. Finally, he proposes that both paid and unpaid research subjects be organized, educated as to their rights, and represented at all levels of review (Institutional Review Boards as well as state and federal commissions). This, he believes, would socialize the interaction, reduce the alienation, and ameliorate the dehumanizing effects of the commodity relationship for both the paid subjects and the researchers.

CHAPTER 9. SOCIOLOGICAL AND BEHAVIORAL PERSPECTIVES

In order to obtain an understanding of the nature of the social structure of a prison and its implications for the prisoner's freedom and competence to make a choice for or against involvement in research, the Commission requested papers by two sociologists: Jackwell Susman, Ph. D., and John Irwin, Ph. D. In addition, Martin Groder, M.D., prepared a paper on behavioral research aimed at rehabilitation of prisoners. These essays are summarized below.

Dr. Susman suggests that a determination regarding prisoners' participation in biomedical or behavioral research depends on understanding their value system and how it deviates from conventional norms. He describes two sets of norms in prison society: (1) The norms which the staff and officials endorse and which support their authority, and (2) the norms of the inmates, which encourage diversity of behavior and subversion of the official system.

It is generally agreed that custody involves profound attacks on the prisoner's self-image through deprivation and control. Inmates cope with the "pains of imprisonment" through various social structures, norms and values. From the sociological literature on prisons and prison life, Dr. Susman identifies two descriptive models of prison society: the "prisoner solidarity" image and the "prisoner diversity" image.

As directed by Dr. Susman, the prisoner solidarity image classifies prisoners according to their conformity to or deviation from the inmate code which encourages cohesion and mutual support among prisoners vis-a-vis their captors. Adherence to the inmate code helps protect the average inmate and strengthens his dignity. A negative aspect of this social structure is the dependence of most prisoners on the few leaders for privileges and protection. The convict leaders are granted special privileges by the administration in return for maintaining order, and thus seem to have little incentive to participate in biomedical and behavioral research. The rest of the inmates may adapt differently to prison life. Some may conform with varying degrees of intensity to the demands of the inmate code, and might reject biomedical and behavioral research since the code rejects conventional values and cooperation. Others may deviate from the norms of the prisoners' world and participate in research to obtain the goods and services their outcast status denies them. Still others may combine conformity and deviance to maximize their chances of leaving prison emotionally and physically unscathed; their participation in research would depend on a careful analysis of the costs and benefits, in terms of their life in prison and their chances of getting out. Finally, some may conform completely to the official norms and may volunteer for research for both altruistic and pragmatic reasons.

The second model of prison society, the prisoner diversity image, focuses on the inmates' identification with persons or groups outside the prison. In this view, the inmates bring subcultural norms and values with them into prison, and, thus, prison society is diverse. This model describes inmates according to three categories. First is the career criminal or professional thief, who assumes a commitment not to prison life but to criminal lifestyles. His objective is to do his time and get out, not to manipulate the prison environment. He may volunteer for research believing that it will be considered favorably by the parole board, or merely to maximize his comfort until he is released. Second is the "convict," who is oriented primarily to prison life and seeks status by manipulating the environment, winning special privileges and asserting influence over others. His participation in research is improbable because it might imply cooperation with the staff. The third group of inmates identify with "legitimate" subculture outside the prison. They have no commitment to the values of thieves or convicts and seek status through the means provided by the prison administration. They are usually rejected by the convict and thief subcultures, and might be expected to volunteer for research projects.

Dr. Susman examines the implications of these models of prison society for the requirements of informed consent: competency, knowledge and voluntariness. Rejecting the Kaimowitz court's view of the effects of institutionalization, Dr. Susman believes that prisoners are able to maintain an identity. He suggests that prisoners' autonomy may expand or contract depending on their circumstances, and that at least some prisoners have sufficient autonomy to give informed consent to participate in research. Providing prisoners with knowledge of the risks associated with research may be difficult, but Dr. Susman believes in principle that it can be done satisfactorily. With respect to voluntariness, both images of prison society indicate that prisoners have a great deal of power and influence over how the prison is run. This implies that mechanisms could be developed to insulate research activities from staff and peer pressure. Dr Susman concludes that prisoners can have the freedom and competence to give informed consent.

Dr. Irwin agrees with Dr. Susman that biomedical research involving prisoners should not be categorically denied, but rather permitted under conditions that protect against the disparity of bargaining power between prisoners and authorities. Instead of a contract model (which assumes relatively equal bargaining power) Dr. Irwin suggests a "rights model," in which minimal rights are established and guaranteed against abuse of power. He observes that conditions of degradation and coercion vary with the degree of autonomy and isolation under which prisons operate, and he believes that most of the constraints (including arbitrary use of discretionary powers) are, in fact, unnecessary and could be abandoned without interfering with effective operation of the penal system. This, he says, woud make the prison environment compatible with conditions necessary for the ethical conduct of research.

Dr. Irwin recommends, therefore, an accreditation process and an ongoing rereview mechanism, in which prisoners, their families and civil rights groups all participate, with a concomitant reduction of discretionary powers now held by prison authorities. He would also require that drug firms pay at the same rate that they pay nonprisoner participants, but that the difference between those wages and the prevailing prison wages be placed in a fund to increase the wages for the general prison population. He would also eliminate any leakage of in-

formation to parole boards about research participation. Finally, he recommends that there be established a review and grievance mechanism independent of the prison system in which prisoners, their families and civil rights organizations would participate. This mechanism would review all decision-making relative to prisoners' rights and perhaps consider, as well, such factors as the adequacy of the health care available to the prisoners.

Dr. Groder, formerly warden-designate of the Federal Correctional Institution at Butner, North Carolina, observes that of all research involving prisoners, only therapeutic psychosocial research directly addresses "the promise of rehabilitation." Unless society is willing deliberately and intentionally to abandon its commitment to rehabilitation, he argues, research of high quality is essential if services are to be provided to offenders in a safe, effective and humane manner. He believes that offenders, as wards of the state, have a "right to treatment" that will be abridged if correctional research is abolished or stifled through overregulation.

Dr. Groder accepts the likelihood that the Commission will wish to recommend additional regulatory procedures, and suggests the following goals: (1) "wards of the state" should be provided an opportunity to rejoin the social mainstream; (2) the quality of consent should be audited to protect basic rights of volunteers; (3) provision should be made for care, compensation, and possible reversal if a bad effect occurs; and (4) the outcome of all research should be published. Dr. Groder recommends that Congress appoint regional boards with the responsibility of achieving the four goals and ensuring prisoner rights. The boards would approve or disapprove projects, and appeals could be made to the federal court of appeals. The boards should sponsor studies of the correctional process and the impact of research, and make the recommendations to Congress regarding pertinent legislation.

Dr. Groder believes, on the basis of his experience, that therapies can be devised to enable prisoners to reenter and remain in the mainstream of society, and he cautions that a ban or limitation on such research will ensure that no correctional innovations will be developed. Therapeutic techniques that become available in nonprison society may also be denied to prisoners, and that would pervert the desire to rehabilitate prisoners as well as infringe upon their right to treatment.

CHAPTER 10. LEGAL PERSPECTIVES

The Center for Law and Health Sciences, Boston University School of Law, prepared for the Commission an analysis of the law relevant to determining the validity of consent by prisoners to their participation in research. This analysis proceeded on the assumption (consistent with the findings of the Commission) that quality of information and ability to comprehend do not generally constitute problem areas in prison research. The key issues reviewed by the Center are whether consent can be given voluntarily in the prison environment, and whether voluntary consent to treatment (and, by extension, to behavioral programs that might not constitute "treatment") is required. The first of these issues is discussed primarily in the context of nontherapeutic biomedical research, and the second is raised in connection with behavior modification programs.

Motivations of prisoners to participate in nontherapeutic research include financial reward, hope for reduction of sentence, seeking of medical or psychiatric help, relief from tedium, desire for better or more secure living conditions, attraction of risk-taking, altruism, etc. The conditions that give rise to these motivations may constitute duress such as would render a contract voidable and, by analogy, render it difficult if not impossible to uphold a prisoner's "informed consent" to participation in research. It has been argued, but not determined as a matter of law, that incarceration inherently constitutes such coercion (or duress) that nontherapeutic research should not be conducted in prisons. In the absence of such a determination, courts will examine particular prison situations for evidence of duress in obtaining consent to participation in research.

Thus, as to financial reward, the questions to be asked are whether there are alternative sources of equal income and, more importantly, whether participation in research is the only way prisoners can earn enough money to maintain a minimum standard of living. As to living conditions, the questions would concern the extent of deprivation in the prison, and the contrast between the prison environment and conditions in the research center. These are matters of fact that would be examined in a particular situation to determine whether a consent was voluntary.

Promise of reduction of sentence is now generally thought to be inherently coercive, but, at least with respect to rehabilitative treatment that may be of experimental nature, sentence reductions have been tied to prisoners' consent. Cases involving waiver of rights indicate that even in a coercive situation, rights may be waived if adequate safeguards, e.g., counsel, are provided.

Medical treatment generally constitutes a battery if the patient has not consented to it. Although one jurisdiction has not applied this rule in cases involving prisoners, other jurisdictions have held to the effect that imprisonment does not deprive a person of the capacity to decide whether or not to consent to health care. The latter rule has been applied in cases dealing with physically invasive behavior modification techniques, but there is no holding on the right to withhold consent to noninvasive behavior modification techniques. Whether or not the techniques were experimental does not appear to have been material in any of the holdings. Rather, the courts appear to have taken into account the degree of invasiveness.

State regulations and statutes dealing with experimentation on prisoners cover the entire spectrum, from permission to total bans of such research. Where any sort of research involving prisoners is permitted, a requirement that informed consent be obtained is explicitly set forth. Where financial or other rewards are explicitly covered, they are generally limited or prohibited. The recently published DHEW proposals related to research on prisoners follow the states that permit such research by accepting the view that prisoners can consent to be subjects so long as adequate safeguards are provided. The proposals published for public comment by DHEW (November 16, 1973) include such safeguards as a required certification by a review committee that there are no undue inducements to participation by prisoners, taking into account the comparability of the earnings otherwise offered; a requirement that no reduction in sentence or parole in return for participation in research be offered unless it is comparable to what is offered in return for other activities; and a provision for accreditation by DHEW of prisons in which research is to be supported or conducted. A subsequent DHEW Notice of Proposed Rulemaking (August 23, 1974) adds a requirement that the reveiw committee also take into account whether living conditions, medical care, etc. would be better for participants than those generally available to prisoners, but deletes the provision for accreditation by DHEW.

The report by the Center for Law and Health Sciences concludes with the following recommendations: that provision for accreditation by DHEW should be made, to ensure that research will not be conducted under such circumstances that participation is the only way for a prisoner to obtain minimally decent living conditions; that the rewards for participation should not be such that they provide the only way for a prisoner to maintain his health and personal hygiene, or induce a person to incur great personal risks; that parole or a reduction in sentence should never be offered in return for participation in research; that there should be some provision for the protective role of an independent counselor; that full information about the research should be given the prospective participant, and that he should not be asked to waive his rights against anyone for injuries that he might sustain. If these safeguards are adopted, the law generally will recognize the informed consent of a prisoner to participation in research.

CHAPTER 11. ALTERNATIVES AND FOREIGN PRACTICES

Alternatives employed in the United States and foreign countries to the conduct of biomedical research in prisons were examined by the Commission. A

paper on alternative populations for conducting phase 1 drug studies was prepared by Dr. John Arnold. Information on two programs using normal volunteers as alternatives to prisoners, one for vaccine testing and one for general physiologic testing, was provided by staff reports. An additional staff report was prepared on the use of prisoners in a research program located in a hospital outside of the prison. Practices in foreign countries related to development and testing of new pharmacologic agents were surveyed and reported to the Commission by Mr. C. Stewart Snoddy and Dr. Marvin E. Jaffe, Clinical Research International, Merck Sharp & Dohme.

The Quincy Research Center, Dr. John Arnold, Director, is an innovative phase 1 drug testing program using cloistered, normal volunteers. It was recently established in Kansas City, Missouri. Dr. Arnold, an investigator with 29 years of experience in drug testing in prisons, highlights some of the practical and ethical problems associated with the use of such a research population, and explains the reasons he now believes that the use of prison inmates as research subjects should be phased out. He identifies limitations imposed by the prison system on the optimal conduct of such studies, and his reasons for believing that the use of nonprisoner volunteers for them is preferable. Cloistering, he says, is necessary to enable the researcher to strictly control the medications received, to intensively monitor subjects for signs of adverse effects, and to identify drug properties with greater confidence. In contrast with research facilities designed exclusively for the cloistering of free-world volunteers for phase 1 studies, however, prisons are neither built nor operated around the needs of medical research. The prison environment may be poorly controlled, particularly with regard to the presence of contraband drugs that may seriuosly influence the result of a clinical trial. Further, the dropout rate for his free-world studies has been about 1.5 percent, a lower rate than he experienced in a prison setting.

Dr. Arnold suggests that the behavioral problems associated with cloistering volunteers are the greatest barrier to the development of alternative populations, and require sensitivity with regard to volunteer selection, adequate preparation for the experience of complete control of life-style, and physical facilities that are attractive and interesting. The second largest problem is the cost. While lodging and food contribute to this expense, the single largest increment stems from the greater degree of supervision and closer medical control required for volunteers in a nonprison setting.

Despite the problems, Dr. Arnold believes the advantages make the use of nonprisoners preferable. One advantage he cites relates to compensation for injury, which the consent form should address. While an indemnification plan similar to those governing other occupational hazards can be arranged for nonprisoner volunteers, it cannot necessarily be done for prisoners. Rates for the Quincy workman's compensation insurance are based on data that show the risks for participants in phase 1 drug research to be only slightly greater than the occupational risks for office secretaries, one-seventh of those for window washers, and one-ninth of the risks for miners. The problem of rendering long-term follow-up and extended care, because prisoners are not likely to return to prison for follow-up examinations or medical attention, is also reduced by using a free-living population.

Dr. Arnold believes that three advantages of the free-world volunteer system will eventually lead to its exclusive use: (1) paid stipends can be comparable to wages paid for other services, (2) indemnification can be offered under plans similar to workman's compensation, and (3) volunteers may chose medical research against other forms of limited employment without any special coercive force.

Dr. Arnold described characteristics of the population attracted to his nonprisoner volunteer program, based on the last 150 subjects at the Quincy Research Center. The men were 80% white, 15% black, and 5% other racial background. Agegroup was 50% age 20–30, 40% age 30–40, and 10% age 40–55. Ninety percent were recently or seasonally unemployed, 8% steadily unemployed, and 2% were college students. Most had completed 8th grade, 60% had completed 12th grade, 2% were college students, and 0.5% were college graduates. Approximately 60% of the subjects were former prisoners; 5 to 10% had been subjects in Dr. Arnold's earlier studies in prisons.

The Clinical Research Center for Vaccine Development (CRCVD) was developed to provide an alternative to the use of prisoners in infectious disease research. It was established in 1974 under a contract with the National Institute of Allergy and Infectious Diseases (NIAID), the primary inpetus being NIAID's desire to develop a dependable source of healthy, adult volunteers that would circumvent many of the problems plaguing its prison-based research and allow infectious disease research to continue. A contract was awarded to the University of Maryland School of Medicine to demonstrate the feasibility of recruiting adult volunteers from the community for research in which live attenuated vaccines for respiratory viruses and mycoplasma are administered to subjects to test infectious capability, symptoms produced, ability to induce immunity, and contagiosity.

The CRCVD is under the direct supervision of two physician-researchers who conduct the protocols developed by NIAID. They are assisted by two part-time recruiters, a consulting psychologists, and support staff. The facility is part of the University of Maryland School of Medicine complex in Baltimore; its major unit is a self-contained, limited access, air-sealed isolation ward, where volunteers reside for the duration of the study.

Recruiting procedures have focused on attracting young, intelligent and healthy adults, to minimize problems with informed consent and adjustment to the dormitory-like setting of the isolation ward. College students were selected as the free-world population most likely to meet these requirements. Recruiters present information on the program at college campuses; interested students subsequently meet with the recruiters so that a blood sample may be drawn. Those volunteers who pass this initial screening procedure are contacted by the recruiters and offered the opportunity to participate as subjects.

Most of the studies conducted by the CRCVD last between 15 and 30 days. During a two-day acclimation period on the unit, there are intensive educational presentations concerning vaccine development and the upcoming study, preliminary medical and psychological screening procedures are conducted, and the volunteers become acquainted with the isolation ward environment and staff. The researchers reserve the right to dismiss volunteers prior to inoculation, but thereafter only the subject may choose to withdraw from a study. To supplement the consent form, an examination is administered prior to inoculation, to assess and document the participant's comprehension of the research protocol. Each volunteer must pass this exam before being permitted to participate in a study.

The volunteers earn $20 per day on the isolation ward, based on what the average college student might earn in a summer job. Volunteers who withdraw from the study are paid up to the point they drop out, whether or not a public health quarantine has been imposed, requiring every subject to remain on the ward until completion of the study. The consent forms note that any medical problems that may arise will be treated at the CRCVD's expense.

As of June 1975, 70 volunteers had participated in nine studies, and the subject pool consisted of 547 people. The age range is between 18 and 50. Of the 70 people who have completed studies, there were 4 with less than four years of high school, 30 high school graduates, 19 college undergraduates, 12 college graduates, and 5 with advanced degrees; 84 percent were white, 7 percent were former prisoners.

The Normal Volunteer Patient Program of the Clinical Center, National Institutes of Health, was established in 1954 and represents one of the earliest efforts to involve members of the community in experimental studies. Volunteers participate in research designed primarily to measure the parameters of normal body functions. Most of the subjects are members of certain religious sects which view participation in this program as part of their public service commitment (e.g., Church of the Brethren, Mennonites, Mormons) and college students. While the volunteers in both categories receive little in terms of financial compensation (usually restricted to transportation and living expenses),

the student volunteers, who reside at the Clinical Center for up to three months on "career development internships," are offered an opportunity to study with NIH scientists in many of the research laboratories. Hence, the program appeals primarily to students interested in careers in the health sciences and related fields.

Recruitment of many of the volunteers for the program is done by colleges under contract with the NIH. The contractor college or university is responsible for handling all the local recruitment details, transporting the volunteers to and from the Clinical Center, and providing any transportation required for follow-up procedures. In return, the contractor receives a fixed fee for each volunteer (to cover the cost of round trip air fare and ground transportation to and from the airport) plus a certain amount for each day of the volunteers' time and inconvenience.

Prospective participants in the program are advised of its purposes and the restrictions in life-style they may experience during their sojourn at the Clinical Center. Studies in which they are asked to participate include, for example, studies of normal physiology (awake, asleep and during exercise), psychological studies (reaction time, attention), dietary manipulation, studies involving drugs, hormones or tracer doses or radioisotope administered either orally or by injection, and exposure to viruses or biochemical products derived from viruses or bacteria.

The Eli Lilly Company Research Unit located at Wishard Memorial Hospital, Indianapolis, Indiana, employs prisoner and nonprisoner normal volunteers in phase 1 drug studies. The prisoners come to the hospital unit from Pendleton State Reformatory 30 miles away; most of them have previously participated in pharmaceutical studies in the Lilly unit at the prison. All studies involving the initial administration of an agent to humans, use of radioisotopes, or tests requiring complex monitoring equipment are done at the hospital unit rather than at the prison unit.

Prisoner volunteers, in order to qualify for participation in the Lilly hospital research program, generally must meet the basic work-release requirements: a date set for parole or for a parole hearing, and one year of good behavior. In addition, specific permission from the warden is required. These restrictions are imposed to make escape less likely. Other work-release choices, when available, generally offer better pay and more freedom of movement. A prisoner participates at the hospital only once and returns to the prison afterward. The stay at the hospital may be as long as three months. While at the hospital, prisoners are required to remain on the research ward. They have limited recreation facilities but may have visitors daily. No special security precautions are taken, but escapes from the unit have been rare.

Two hospital wings adjoining the prisoner research unit are used for phase 2 studies in patients and phase 1 studies in nonprisoner normal volunteers. The latter are generally men off the streets, chronically unemployed, who know of the program and request on their own, often repeatedly, to participate in drug studies. Prisoners and nonprisoners usually are not involved in the same protocol, although the types of studies are the same. Nonprisoners are paid $7 a day; the prisoners receive $3 a day (the rate established as the maximum by the prison).

Advantages of the hospital as the setting for research of this type are the availability of excellent emergency care (although no serious adverse reactions requiring it have occurred in 10 years of operation), the ease of access of the investigator to the subjects, and surroundings that are pleasant in comparison with the prison. Disadvantages are the limited number of prisoners who can qualify for the program and the boredom of the research. The main reason men drop out of a study is that they become bored and ask to return to their friends and activities at the prison.

Human studies in pharmaceutical research and development in other countries. The survey[4] conducted on practices of foreign countries regarding use of prisoners and other groups in the development and testing of new pharmaceutical agents included seven European nations, five English speaking countries, four Latin American nations and Japan. In all the countries surveyed, clinical pharmacology studies (pharmacokinetic and dose-ranging studies) can be conducted in normal subjects. Almost uniformly, these countries do not permit such studies to be conducted in prisoners. In theory, prisoner studies could be done in the United Kingdom, but in practice no such research is conducted in prisoners outside the United States. In most countries, volunteers, when used, are students, civil servants (imilitary, police and firemen), and medical and paramedical personnel.

In general, clinical pharmacology studies conducted abroad involve patients with the disease which the drug is intended to treat, rather than normals. The use of patients with other diseases is not uniformly approved, but may be permitted if data relevant to the primary indication can be obtained. The requirement for specific governmental approval (IND or clinical trials certificate) to conduct clinical pharmacology studies in normal subjects or patients also varies among countries. In all the countries surveyed, human pharmacokinetic and pharmacodynamic data are "helpful" to support new drug registration. In about half the countries, such data are mandatory. Only France and Japan require that such data be generated in the indigenous population; other countries accept foreign data.

With the exception of Italy, no country requires long-term (1–3 months) controlled safety studies in volunteers before initiating studies in patients. For registration purposes, however, Belgium, Italy, Canada, and in some cases the United Kingdom require such data. Since prisoners are not used in those countries for such studies, it is assumed that such data often are generated elsewhere. In most countries, longer term studies to determine the safety of a new drug entity are done in the patient population which the drug is intended to treat. This provides a measure of how the drug may be expected to behave in clinical practice under the more usual conditions of use and when combined with the usual concomitant therapies. The subjects of such studies receive the presumed benefits of therapy with the new agent to balance its unknown risks.

Although prisoners have not been subjects in phase 1 drug testing in other countries, they have been subjects of nontherapeutic research. For example, prisoners in a number of countries, including Australia, Canada, Denmark, England, Germany, Greece, Ireland, Mexico, Poland and Japan, have been surveyed to determine the incidence of the XYY chromosome anomaly.

CHAPTER 12. SURVEY OF REVIEW PROCEDURES, INVESTIGATORS AND PRISONERS

Data on research in prisons were presented by the Survey Research Center, University of Michigan, in a preliminary report to the Commission on a study of institutional review procedures, research on human subjects, and informed consent. Data were presented from interviews done in early 1976 with investigators in 41 studies and representatives of review committees in five prisons, with 181 prisoner-subjects in four of these prisons, and with 45 prisoner-non-subjects in two of these prisons. The subjects had all participated in research since July 1, 1974. No individuals or institutions were identified in the report.

The research. As described by principal investigators in the five prisons, their research was predominantly pharmaceutical research, mostly phase 1 testing. In most of the studies, drugs were administered orally and blood and urine samples were analyzed. Very few of the experiments, according to investigators, were intended to benefit subjects, although researchers felt that a medical or psychological benefit might occur in some cases. The research also entailed some medical and psychological risk according to investigators, although they estimated the probability of serious risk to be very low or nonexistent. All investigators reported the existence of procedures for treating subjects who might suffer harmful effects of the research.

Review procedures. The Survey Research Center found that the structure of the review process differed among the five prisons. In some places it included Institutional Review Boards (IRB's) established in compliance with DHEW regulations on protection of human subjects; in others it included review committees appointed by the State department of corrections, by prison authorities, or by university officials. The review process at some prisons included com-

[4] Provided to the Commission by Marvin E. Jaffe, M.D. and C. Stewart Snoddy, Merck Sharp & Dohme Research Laboratories.

mittees created by drug companies. Biomedical and legal consultants and prisoner representatives played a role in some review procedures. At all prisons, the review was conducted in stages involving different combinations of the above mechanisms. Membership on review committees was reported as being very stable.

While few proposals are rejected in the review process, it was reported that few are approved as submitted. Most frequent changes are in consent procedures, though modifications were also reported in research design. The process was said to work smoothly, at least in part because of long-standing relations between review committees and investigators, and awareness of mutual expectations. Little monitoring of the actual conduct of research was reported, although most members of review committees were said to have visited the prison or research facilities at some time.

The prisoner subjects. The interviews with prisoner subjects revealed them to be generally supportive of biomedical research in prisons. The near consensus of favorable attitude among subjects occurred in all four institutions where prisoners were interviewed. Practically all of these subjects said that the information they received in advance of the experiment was understandable and correct, that the researchers were willing to answer subjects' questions, and that participation was voluntary. About one-third of the subjects indicated that they expected the research would involve some risk. A few subjects nonetheless felt that they had experienced specific difficulties as a result of the experiments that they did not fully expect. Subjects offered a number of reasons for participating in research, the most prevalent being financial. About 90% of them said that they would be willing to participate in future experiments.

Consent forms. The Survey Research Center's analysis of consent forms provided by investigators indicated that almost all described the purpose of the experiment, and all described the procedures. About 85% mentioned and listed risks. An analysis of the reading ease of consent forms indicated that a large proportion were at a difficult reading level. The difficulty did not appear to be solely attributable to the use of medical and technical terminology; some of the difficulty was related to the complexity of sentence structure and the nature of many of the nontechnical terms that were employed. Reading difficulty appeared to be greater for consent forms associated with projects that investigators estimated to entail relatively higher risks. The explanations provided in the consent forms, however, were supplemented in all cases by oral explanations.

Nonsubject prisoners. Prisoners who have never participated in research projects, or whose participation was not recent, were less favorable, on the average, toward research in prisons than were the current subjects. Differences of opinion about research were more apparent within the group of nonsubjects than within the group of subjects. Some nonsubjects were strongly opposed to research in prisons. Prisoners offered a number of explanations for not participating, including assertions that they had not been asked, that they feared the possibility of serious harmful effects, that they mistrusted research or researchers, or that they were opposed to the idea of research in general. Some said that they would participate if they were asked and/or if the benefits to themselves were more substantial. Nonsubjects who were interviewed had a slightly lower level of formal education than did the subjects, and the former were less likely to have prison jobs. Furthermore, for those inmates who held jobs, the number of hours worked per week was lightly lower for nonsubjects than for subjects.

Suggestions from respondents. Relatively few prisoners offered suggestions about how studies on human beings might be improved. Increased payment, better facilities (e.g., rooms to be used exclusively for research purposes), more complete explanation of possible harmful effects (e.g., pamphlets or written materials explaining projects), and better treatment (e.g., taking more time with subjects and exercising more care) were among the suggestions of prisoners. Some nonsubject prisoners suggested abolishing the research program.

Principal investigators also offered few suggestions. Some proposed that rules and review procedures be simplified and made less rigid. Others suggested that larger review committees be established, that committee members should have experience in dealing with prisoner volunteers, and that the committee procedure be made less susceptible to the biases of individual members.

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PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

PUBLIC INFORMATION

Final Regulations

Title 21—Food and Drugs

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

[Docket No. 76N-0067]

PUBLIC INFORMATION

Final Regulations

The Food and Drug Administration (FDA) is issuing a second final regulation concerning public information in response to comments on the initial promulgation of such regulations. This final order does not change most of the agency's current regulations, either because no comments were received or because the comments submitted did not persuade the Commissioner of Food and Drugs that changes were in order. Certain provisions are being revised, however, to make it clear that the agency will not ordinarily provide more than one copy of a record to the same person, to clarify the agency's policy respecting waiver of fees, and to effect other changes. This order shall be effective February 14, 1977.

In the FEDERAL REGISTER of December 24, 1974 (39 FR 44602), the Commissioner of Food and Drugs issued final regulations governing the disclosure of information to the public in conformity with the public information section of the Administrative Procedure Act, known commonly as the Freedom of Information Act (FOIA) (5 U.S.C. 552). Interested persons were invited to file, within 60 days of publication of the final order in the FEDERAL REGISTER, written comments regarding matters not raised in the notice of proposed rule making published in the FEDERAL REGISTER of May 5, 1972 (37 FR 9123), and considered in the preamble to the final regulation. The final regulation provided that any changes justified by the comments would be the subject of a further regulation amending the specific regulations involved.

The Commissioner received 28 comments; the majority repeated substantive comments previously made on one or more sections of the original proposal, although some dealt with matters not previously raised and considered. The majority of the responses, mainly from trade associations and representatives of companies subject to regulation under the laws administered by FDA, objected to specific provisions of the final regulation and suggested changes that would make less information in government files available for public disclosure. The few comments received from individuals and consumer groups generally supported the provisions of the final regulation, and suggested changes to further liberalize agency disclosure policies.

Those letters making new substantive comments or suggestions and the Commissioner's conclusions concerning them are discussed in this preamble. The respondents that raised matters that were previously considered in the preamble to the December 24, 1974 final regulation, and references to the specific paragraphs of that preamble wherein they were considered, are also briefly set out below. For the convenience of the reader, wherever this preamble are grouped under the appropriate headings of the preamble to the December 24, 1974 final regulation.

FDA EXPERIENCE UNDER THE FREEDOM OF INFORMATION ACT

1. In the preamble to the December 24, 1974 final regulation, the Commissioner noted that the May 1972 proposal represented a major change from prior agency policy. Before the regulations were proposed, the agency retained approximately 90 percent of its records as confidential; since the May 1972 proposal, approximately 90 percent of FDA records have been available for public disclosure. The Commissioner concluded in the preamble to the December 24, 1974 final regulation that the impact of this policy change on FDA was beneficial rather than detrimental. The policy of open disclosure, the Commissioner concluded, impeded neither communication with persons outside the Federal government nor internal agency deliberations, but had the salutary effect of encouraging closer public scrutiny of FDA actions and "fostered greater public accountability of the agency." The beneficial effects of the FDA openness policy, reflected only in part in its public information regulations, caused the Commissioner to enlarge the categories of documents available to the public by his conclusion in the preamble to commit the agency to liberal use of its discretion under FOIA to disclose records that could be withheld from the public under strict terms of the act's nine exemptions.

Since publication of the final regulations in December 1974, FDA experience confirms the Commissioner's conclusion that a policy of open disclosure is in the best interests of the public and the government. Remaining fully committed to this policy, FDA will continue to strive to meet both the spirit and letter of the FOIA.

Although the FOIA and these regulations have generally resulted in substantial public benefits, they have also produced some unexpected and, for the agency, disappointing consequences. The volume of freedom-of-information (FOI) requests received by FDA has been much larger than anticipated. During fiscal year 1975, FDA received approximately 5,300 requests; in fiscal year 1976, the total number of requests ballooned to nearly 20,000. This trend continues today and the Commissioner expects that FDA will receive over 24,000 requests in fiscal year 1977. A large proportion of the requests received by FDA are lengthy, voluminous and complex, which makes responding to them involved, time consuming, and costly.

Last year, FDA's uncompensated cost of responding to FOI requests exceeded $1 million. Fees charged, which are supposed to reflect actual cost to the government, totaled only $78,340. This disparity between the cost to FDA and the revenue from fees is disturbing because 86 percent of the FOI requests received by FDA are from industry and private attorneys, while only 14 percent come from the general public, consumers, press, health professionals, and scientists. It is, in the Commissioner's view, inappropriate that the general public must subsidize the "industrial espionage" in which many commercial firms engage.

The Commissioner does not intend to modify the FDA disclosure policy because of this "imbalance" in requests. However, the Commissioner does intend to take steps to secure a revision in the fee schedule to more closely reflect the actual cost incurred by FDA in searching for requested documents. The Commissioner's views concerning the fee schedule are fully set forth elsewhere in this preamble; namely, an increase in the fee schedule coupled with a more liberal application of agency policy on waiver of fees will result in a more equitable distribution of the costs of responding to FOI requests without affecting the amount or type of records available to the public.

PROCEDURAL ISSUES RELATED TO PROMULGATION OF FINAL ORDER

2. Many comments contended that the promulgation of the final regulation in December 1974 represented a novel concept in agency rule making not in accordance with the notice and comment requirements of section 4 of the Administrative Procedure Act. It was asserted that the regulations are more than a mere particularization of the FOIA, and reflect FDA interpretation of the provisions of the act and their applicability to specific categories of documents in FDA files. It was argued that, because the final regulation differs in numerous and substantial respects from the May 1972 proposal, these regulations should be treated as entirely new and published as a proposal with a full comment period before their issuance in final form. It was further asserted that the justification in the preamble for the procedure used by FDA, i.e., that the FOIA is self-executing, even if assumed to be a correct statement, is not dispositive of the procedural objections. Comments noted that the preamble and regulations endeavor to interpret and reconcile seemingly conflicting statutes and to make substantive determinations as to what constitutes trade secrets and confidential commercial or financial information. These interpretations, reconciliations, and determinations were said to be of such significance and were such a substantial departure from past practice that they cannot be viewed as merely the implementation of a self-executing statute.

The Commissioner does not agree with these comments. The FOI regulations were promulgated in accordance with 5 U.S.C. 552(a)(1), to apprise the public of how FDA intended to respond to the congressional mandate. The issuance of these detailed regulations also enables persons, in advance of disclosure, to determine whether documents that they have previously submitted to FDA and

believe to be confidential fall into a disclosable category and to seek immediate judicial review if they disagree with the classifications of the agency. Many agencies, in implementing the FOIA, have issued regulations without affording any time for public comment. Others have issued regulations that merely parallel the language of the statute, providing no more guidance as to the disclosability of certain records that the FOIA itself. In contrast, FDA published in the FEDERAL REGISTER a notice of proposed rule making with a 60-day comment period. That proposal and the subsequent final regulation contained a detailed statement of how categories of records in the files of the agency were to be treated. The Commissioner concludes that the procedures followed more than met the requirements of any provision of the Administrative Procedure Act and were not legally defective in any respect.

Moreover, a 60-day comment period was provided after the promulgation of the final regulation to enable persons to comment further on issues not previously raised. The comments received during that 60-day period are the subject of this preamble and final regulation. Any asserted error in failing to issue the December 1974 publication as a proposal was therefore corrected by providing this additional time for comment. Thus, the Commissioner is confident that the procedures followed in promulgating these regulations have fully satisfied all applicable procedural requirements.

3. Comments also asserted that the request in the preamble to the December 24, 1974 final regulation that "comments submitted within this additional period should address new issues and should not reopen matters raised by the initial proposal and fully discussed in this preamble" makes it impossible to delineate those portions of the final regulation deemed proper for comment and that a rule making procedure that restricts comments to unspecified portions of the regulations and preamble is procedurally defective.

The Commissioner concludes that there is nothing improper about requesting comments on new matters and discouraging those raised by the initial proposal and fully discussed in the preamble to the December 24, 1974 final regulation. To determine whether a matter had been previously raised and discussed, persons merely had to refer to that preamble. If the matter they desired to comment upon was not the subject of earlier comment and was not discussed in the preamble, it was appropriate to submit a comment upon it.

Moreover, many comments ignored the Commissioner's request quoted above and commented upon matters raised and fully discussed previously, sometimes in language identical to that used in earlier comments. Nonetheless, these comments have been reviewed by the Commissioner and, in most instances, they are briefly discussed in this preamble. The Commissioner therefore concludes that no person was constrained from making any comment on any portion of the final regulation.

4. Comments contended that, to the extent that the lengthly preamble is deemed by FDA to have the effect of a legal advisory opinion or to modify, limit, or expand the meaning of the regulations, the preamble constitutes rule making subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553).

The Commissioner does not agree with these comments. The preamble is intended to explain the regulations and has the status of an advisory opinion. It does not modify, limit, or expand the meaning of the regulations. The preamble is a discussion of specific situations expected to arise involving the application and interpretation of the regulations. The preamble, accordingly, merely sets forth the Commissioner's interpretation of the regulations as applied in specific situations, and thus does not constitute rule making subject to the notice and comment requirements of the Administrative Procedure Act.

5. A few comments contended that the determination of disclosability is not amendable to quasi-legislative treatment by regulation according to category or type of record. It was argued that each determination involves the exercise of the adjudicative function of the agency and must be evaluated on its own merits in a proceeding affording not only notice, but opportunity for hearing and the presentation of comment by persons who might be affected by disclosure.

The Commissioner advises that the requirements imposed by this comment before agency disclosure of any record within its files are inconsistent with the mandate of the FOIA and would frustrate the implementation of that act by the agency. This point has been recognized by the United States District Court for the District of Columbia in *Pharmaceutical Manufacturers Association* v. *Weinberger*, 401 F. Supp. 444, (D.D.C. 1975), subsequent opinion, 411 F. Supp. 576, 579 (D.D.C. 1976), where the court noted,

> Broad, categorical regulations are therefore imperative. Ad hoc inquiries or item by item consultations would not only be impractical but also undercut the open disclosure policy of the FOIA and the FDA regulations.

The Commissioner therefore rejects this comment.

6. Comments contended that the final regulation of December 24, 1974, does not comply with Executive Order 11821, issued November 27, 1974, requiring a statement certifying that the inflationary impact of all major legislative proposals, regulations, and rules emanating from the executive branch of the Federal Government has been considered.

The Commissioner notes that FDA is required by law to implement the FOIA, a fact not altered by the Executive Order. These regulations are intended to implement the act and to provide guidance on the manner in which various types of documents will be handled by the agency. Records available under a specific section of the regulations would, in most instances, also be available whether or not FDA determined to issue detailed regulations. Accordingly, the Commissioner concludes that Executive Order 11821 is not applicable to these public information regulations. Moreover, the Commissioner is unable to discern, nor did any comments identify, any inflationary impact that these regulations could have.

SECTION 305 HEARING RECORDS

7. Several comments objected to the availability for public disclosure of information contained in the file relating to a section 305 hearing (an informal hearing held prior to institution of criminal proceedings, provided for by (section 305 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355)) after the file is closed or the statute of limitations has run, whichever occurs first. The comments objected sharply to the availability for public disclosure of records pertaining to an individual considered for prosecution, but not prosecuted, and to the release of company and product names. It was argued that no useful regulatory purpose would be served by such disclosures, and that disclosure of company and product names may deprive persons of their right to a fair trial in matters not involving FDA. The assertion was also repeated that disclosure of company and product names would subject the company to an "onslaught of adverse publicity." Comments also asserted that the release of section 305 hearing records constitutes an unwarranted invasion of privacy.

The Commissioner has, in paragraph 16 of the preamble to the December 24, 1974 final regulation, previously concluded that Congress has determined that the right of the public to this type of information in government files outweighs any potential harm caused by the release of such information. It is only through the release of section 305 hearing records after the matter is closed that the exercise of prosecutorial discretion by FDA and the Department of Justice may be subject to scrutiny and public accountability. This is particularly true when prosecution is not recommended or is recommended but not instituted. Furthermore, the names and other information that would identify individuals are deleted before disclosure except when the Commissioner concludes that there is a compelling public interest in the disclosure of the names. The privacy rights of individuals will, accordingly, be protected.

The Commissioner concludes that the possibility that the release of section 305 hearing records will interfere with any person's right to a fair trial or impartial adjudication in matters not involving FDA is too remote and speculative to justify nondisclosure of those records. Finally, the possibility of adverse publicity stemming from the release of records such as section 305 hearing records without the deletion of company or product names was considered by Congress and, absent any provision in the FOIA for the deletion of such names, must be deemed to be outweighed, in the judgment of Congress, by the public's right to the infor-

mation. The Commissioner has previously concluded that the protection of privacy afforded by the Constitution and the sixth exemption of the FOIA (5 U.S.C. 552(b)(6)) extends only to individuals. The recently enacted Privacy Act (5 U.S.C. 552a) also protects only the privacy rights of individuals.

8. A seeming anomaly was also noted, in that paragraph 18 of the preamble to the December 24, 1974 final regulation provides that if records relating to a closed section 305 hearing for a specific individual are requested by name, they will be released only after deletion of the names and any information that would identify the individual.

The Commissioner advises that the names and identifying details are deleted from section 305 hearing records requested by name to protect against indiscriminate subsequent disclosures. The requesting party obviously knows the name of the person, but deletion minimizes the possibility of additional widespread publicity. Accordingly, section 305 hearing records will be released only after the names and identifying information are deleted.

9. Several comments objected to the provision in § 1.6(c)(4) (21 CFR 1.6(c)(4)) for the release of section 305 hearing records respecting possible criminal prosecution of individuals without deleting the names and identifying information when the Commissioner determines that there is a "compelling public interest" to do so. The contention was made that such discretionary disclosure exceeds the authority of the Commissioner under the FOIA and, without guidelines for such discretionary disclosure, the release of section 305 hearing records relating to possible criminal action without first deleting the names and identifying information would be unreasonable and arbitrary. One comment suggested that the written consent of the individual who was the subject of the investigation be obtained before the release of any names or identifying information.

The Commissioner advises that disclosure of section 305 hearing records respecting possible criminal prosecution with the names and identifying details intact may, depending on the particular circumstances, be completely consistent with the FOIA and the Privacy Act. If the public's interest in disclosure is indeed "compelling," the benefits in disclosure outweigh any infringement of personal privacy. In applying 5 U.S.C. 552(b)(6), the courts have required that the benefits from disclosure be weighed against any possible infringement of personal privacy. The determination that a "compelling public interest" exists that warrants release of the names and identifying information pertaining to individuals considered for prosecution will be made in accordance with traditional criteria for such determinations, and after due consideration of those factors listed in § 4.82 (21 CFR 4.82) of the final regulation.

The Commissioner rejects the suggestion that the written consent of the individual who was the subject of the investigation be obtained before the release of names or identifying information. The ultimate responsibility for compliance with the FOIA by FDA rests with the Commissioner. There is no requirement in the FOIA that the consent of individuals be obtained before the release of disclosable information. When the Commissioner concludes that there is a compelling public interest warranting release of names or identifying information, the records will be released without deletions whether or not consent is given by the individual who was the subject of the investigation.

OFFICIAL RECORDS AND INFORMATION

10. Questions have arisen as to whether the phrase, "testimony before any tribunal," as used in § 4.1(a) (21 CFR 4.1(a)) of the final regulations includes committees of Congress.

The Commissioner advises that § 4.1 was first published in the FEDERAL REGISTER of December 20, 1955 (20 FR 9554). It was designed to prevent the subpoena of agency officials in private litigation and similar matters. The phrase "testimony before any tribunal" has not been, is not intended to be, and will not be interpreted to include committees or subcommittees of Congress.

11. One comment contended that FDA employees should be free to give testimony without first securing the permission of the Commissioner because the public is entitled to information from FDA employees which is not filtered through the Commissioner.

The Commissioner regards this suggestion as impractical and contrary to the public interest. The Food and Drug Administration now receives a very large number of requests for agency employees to testify in private litigation and other matters in which FDA is not a party. Were agency employees free, or required, to testify in private litigation whenever requested, the regulatory activities of the agency could be severely disrupted. The agency could not adequately function if its 6,500 employees were constantly preparing for and giving testimony in private litigation. Section 4.1 is therefore necessary for the agency to fulfill its primary regulatory responsibilities.

UNIFORM ACCESS TO RECORDS

12. One comment requested that disclosure of drug experience reports submitted by physicians and hospitals be restricted to health care professionals and institutions on the grounds that the general public does not possess sufficient expertise to interpret the significance of such reports and that release, upon request, to any member of the public would result in undue public alarm and unjustified concern by individuals under medication.

The Commissioner has previously advised, in paragraph 31 of the preamble to the December 1974 final regulation, that, if any information is available to one member of the public, it must be available to all. Under the FOIA, the disclosure of information does not depend ordinarily on the requestor's interest in or ability to understand the information sought.

PARTIAL DISCLOSURE OF RECORDS

13. A comment suggested that, whenever FDA determines that a document contains both disclosable and nondisclosable material, the agency should consult with the submitter of the document before any release to determine the extent to which the disclosable material may be segregated from the nondisclosable. It was argued that consultation is especially necessary when the requested document is technical because the expertise necessary to identify nondisclosable material is likely to be possessed only by the submitter.

The Commissioner concludes, and has previously stated, that the submitting person, and possibly other affected persons, will be consulted only if there exists a close question of the confidentiality of the requested records. If a close question exists, because of the intermingling of disclosable and non disclosable information, be it technical or otherwise, consultation will occur. The mere fact that disclosable and nondisclosable information is contained in a single document, as is often the case, does not warrant automatic consultation. If the information contained in the document is of such a nature that the disclosable information cannot be reasonably separated from the nondisclosable information by FDA without the benefit of additional information, this would constitute a close question.

14. Several comments asserted that the application of these regulations to material in FDA files submitted in confidence before the effective date of the final regulations is a retroactive application of the regulations that constitutes a denial of administrative due process to the submitters of such material unless notice is given to the submitter in advance of public disclosure of a particular item.

The Commissioner advises that Congress intended in enacting the FOIA to reverse the disclosure policies of Federal agencies to make disclosure the rule and nondisclosure the exception. Congress did not distinguish between information submitted before the FOIA was passed and that submitted after passage. Furthermore, information that is not otherwise exempt under one of the nine exemptions of FOIA cannot be made exempt on the basis of a "pledge of confidentiality." *Petkas* v. *Staats*, 501 F. 2d 887, 889 (D.C. Cir. 1974); *Charles River Park A Inc.* v. *HUD*, 519 F. 2d 935, (D.C. Cir. 1975). The application of the final regulations to all records in FDA files, regardless of when submitted, has been squarely upheld in *Pharmaceutical Manufacturers Association* v. *Weinberger*, 401 F. Supp. 441 (D.D.C. 1975), subsequent opinion, 411 F. Supp. 576, 580 (D.D.C. 1976). The question of notice to the submitter before disclosure was also an issue in that case and is discussed in paragraph 37 below.

PROHIBITION ON WITHDRAWAL OF RECORDS FROM FOOD AND DRUG ADMINISTRATION FILES

15. A few comments contended that information previously submitted to FDA on a voluntary basis should be permitted to be withdrawn from agency files. It was argued that § 4.29 (21 CFR 4.29) is based on an erroneous assumption that some form of property right passes to the government whenever a private party submits trade secret or confidential commercial or financial information to it. The comments concluded that, because no property right does in fact pass to the government, submitters of material should be permitted to withdraw the records under certain circumstances, e.g., when a product is finally abandoned.

The Commissioner advises that under no circumstances will documents submitted to FDA and thereafter made part of agency files be returned to the submitting person. The Food and Drug Administration does not maintain that the government acquires any property right in data and information submitted to it. That does not mean, however, that persons are entitled to withdraw material received by FDA in furtherance of its regulatory responsibilities from agency files. Once such material becomes a part of agency files it may be used at any time and in any reasonable way to support appropriate regulatory action by the Commissioner.

PERMANENT FILE OF REQUESTS FOR FDA RECORDS

16. One comment requested that § 4.31 (21 CFR 4.31) be revised to reflect the fact that the permanent file of FOIA requests and responses (the "public log") did not exist until January 1, 1975.

The Commissioner notes that the 1974 amendments to the FOIA require all agencies to file an annual report with Congress on the administration of the act. The public log enables FDA to compile the data necessary to comply with that requirement. Thus, although the May 5, 1972 proposal did not contain a requirement that a public log be maintained, § 4.1 was added to the final regulations to assist FDA to comply with the 1974 FOIA amendments. The public log of all requests and responses has been maintained, and all requests numbered sequentially since January 23, 1975. The Commissioner sees no need to revise § 4.31 to state when the log began.

17. One comment suggested that, in addition to the permanent file of FOIA requests and responses, FDA maintain a topical index of those requests and responses.

The Commissioner concludes that it is not possible for FDA to index all FOIA requests and responses in light of the enormous number of requests received by the agency. The administrative burden that would be borne if the agency undertook to develop and maintain such an index would greatly overtax the personnel available to handle FOIA matters.

18. Section 4.40(c) (21 CFR 4.40(c)) has been revised to reflect the fact that the public log maintained by the Public Records and Documents Center of FDA does not contain the time a request is received, the address of the person making the request, the number of staff hours and grade levels of persons who spent time responding to the request, or the payment requested and received. The Commissioner advises that these items have not been maintained on the public log because experience has demonstrated that the time required to collect and record the information is not justified by any possible benefit from having the information available for each logged request. Furthermore, the address of the person making the request and the payment requested and received are readily ascertainable from other sources, such as the actual file containing the request and any correspondence from FDA concerning the request.

PROCEDURES AND FEES

19. One comment contended that provision should be made for the reduction of the fee whenever the fee is "excessive" due to inefficiencies within FDA, such as in recordkeeping procedures.

The Commissioner advises that a blanket rule providing for the reduction of excessive fees due to inefficiencies within FDA would be inappropriate. However, such inefficiencies will be taken into consideration as one factor in determining whether a request for a reduction in the fee should be granted. The Commissioner notes, in passing, that some of the FOI requests received by the agency are from companies that have previously submitted the documents to the agency and are not able to locate a copy in their own files.

20. Experience in recent months has shown that a number of persons and organizations make requests on a frequent and regular basis for certain agency records, such as, the public log containing all FOI requests and FDA responses. The fee for providing those records does not generally exceed $5.00 and, accordingly, they have often been provided free of charge.

The Commissioner advises that, in accordance with § 4.43(a)(1) (21 CFR 4.43(a)(1)), FDA will aggregate the costs for such regular requests made by the same person or organization or related persons or organizations on a monthly basis in order that such persons or organizations may appropriately bear the cost of copying, which is now often borne by FDA.

Additionally, experience in recent months has shown that a number of persons and organizations, primarily the numerous organizations that file requests for records with FDA on behalf of their clients, make numerous requests for the identical records, presumably to enable them to provide them to different clients. This practice of making several requests for the identical records has generated a substantial number of so-called "third-party" requests, i.e., requests seeking the records disclosed in response to a previous request. In fiscal year 1976 nearly one-quarter of all requests received by FDA were for records previously disclosed in response to an earlier request. A substantial portion of those requests was for records previously disclosed to the same requestor. Quite obviously, these third-party requests have added significantly to the FOI workload of FDA.

The Commissioner concludes that the FOIA does not require that FDA provide two, three, and sometimes more sets of identical records to the same persons and organizations. This practice has significantly taxed available agency resources for responding to FOI requests, sometimes causing delays in responding, and resulting in FDA and the taxpayers subsidizing the profitmaking activities of the organizations making the third-party requests. Accordingly, the Commissioner advises that, except in unusual circumstances, FDA will not provide more than one copy of requested records to the same requesting person or organization.

21. One comment suggested that those employees of FDA responsible for disclosing records in response to an FOI request be identified on the determination letter in the same manner that those who are responsible for denying records are identified. To do otherwise, it was argued, is to subtly coerce employees into granting requests rather than be identified as responsible for a denial.

The Commissioner advises that 5 U.S.C. 552(a)(6)(C), a provision of the 1974 amendments to the FOIA, requires that any letter of determination denying a request for records identify by name and title or position those persons responsible for the denial. The Commissioner rejects the suggestion that FDA employees will be coerced into granting requests rather than be identified as responsible for a denial.

The Commissioner concludes that it would be unnecessarily burdensome for letters of determination granting requests to contain the names and titles or positions of employees responsible for granting the request, and that no useful public interest would be served.

DISCLOSURE OF DOCUMENTS IN THE OFFICE OF THE HEARING CLERK

22. Questions have arisen as to whether requests made in person to review, and in many instances copy, documents on file in the office of the FDA Hearing Clerk must be handled in accordance with all the provisions of the regulations, or whether an expedited procedure is feasible.

The Commissioner concludes that because virtually all documents on file with the Hearing Clerk are clearly disclosable to any member of the public, and because large numbers of persons make requests to review and copy such documents, it is appropriate to facilitate such review and copying by providing an expedited procedure applicable solely to material on file in that office. According-

ly, requests made in person to view or copy documents on file with the Hearing Clerk will continue to be responded to by the staff of the Hearing Clerk as rapidly as possible. The requestor will need merely to fill out a one-page form available in the office of the Hearing Clerk in order that FDA may maintain accurate records of all FOI requests. The fee schedule applicable to records obtained from the Public Records and Documents Center will apply to records obtained from the FDA Hearing Clerk.

Requests for material in the office of the Hearing Clerk not made in person shall continue to be treated in the same manner as all other FOI requests and must be sent to the Public Records and Documents Center (HFC–18) pursuant to § 4.30 (21 CFR 4.30).

FILING A REQUEST FOR RECORDS

23. Suggestions have been made that the regulations include a provision to encourage requestors to identify FOI requests by marking both the envelope containing the request and the request itself with the phrase "FOI Request."

The Commissioner concludes that the suggestion is worthwhile and should be adopted. It is emphasized, however, that requestors are only encouraged, not required, to identify their requests with the phrase "FOI Request." Those so identified will simply be more readily identified as FOI requests. A new sentence is added to § 4.40(a) (21 CFR 4.40 (a)) to state this policy.

24. One comment asserted that the provision in § 4.41 (21 CFR 4.41) that records will be provided "as soon as possible" leads to misunderstandings between FDA and the public. This occurs, according to the comment, because the phrase is undefined and does not have the urgency of either the FOIA or paragraph 45 of the preamble to the December 1974 final regulation, both of which state that records shall be made "promptly available." The comment recommended amending the regulations to require that determination letters include an estimate of the date on which the records will be available.

The Commissioner advises that the phrase "as soon as possible" is intended to convey the same urgency as "promptly available." Insofar as possible, records are sent to requestors immediately upon receipt of payment. The sheer volume of requests received by FDA does, on occasion, result in unavoidable delay in providing records. The Commissioner is confident that additional personnel and streamlined internal procedures will reduce those delays to an absolute minimum. The Commissioner also concludes that while every effort is made to make records available immediately, it is not feasible and would be unnecessarily time-consuming to include an estimate of the date on which records will be provided in each determination letter.

TIME LIMITATIONS

25. Comments expressed concern that, in an effort to make a determination on all FOI requests within 10 working days, FDA regulatory responsibilities will suffer. It was suggested that determinations on requests be made "within a reasonable time period" and that a special staff be created within FDA to handle all FOI requests so that other employees are not diverted from normal regulatory responsibilities.

The Commissioner advises that the recent amendments to the FOIA require that determinations on requests be made within 10 working days of receipt of the request. The Food and Drug Administration intends to comply with that congressional mandate. Documents for which requests have been granted will be sent to the requestor as soon as possible thereafter.

The Commissioner advises that each major organizational component within FDA has specially trained FOI officers who handle most requests. Additionally, a staff manual guide has been prepared that explains the responsibilities of each agency employee under the FOIA. Consequently, although all agency employees may be called upon to assist in carrying out the mandate of the FOIA, most day-to-day responsibilities have been assigned to the specially trained FOI officers.

FEES

26. The fees set out in the December 24, 1974 final regulation were based primarily on the fees established by the Department of Justice in 28 CFR 16.9, because the Department of Justice has the lead responsibility for implementation of the FOIA. In the FEDERAL REGISTER of January 13, 1975 (40 FR 2443), the Department of Justice revised its fee schedule to reflect actual costs of $4.00 per hour for clerical search time and $8.00 per hour for search time by nonclerical personnel. In the FEDERAL REGISTER of May 1, 1975 (40 FR 18997), the Department of Health, Education, and Welfare (HEW) revised its fee schedule to include a flat charge of $3.00 per hour for search time by both nonclerical and clerical personnel, which represents a charge substantially below actual cost to the government.

The Commissioner concluded that to achieve uniformity of fees within HEW, the fee schedule adopted by HEW should be incorporated in § 4.42 (21 CFR 4.42), which is revised accordingly. The fee schedule has been followed by FDA for well over a year.

The Commissioner notes, however, that the HEW fee schedule results in charges substantially below cost to the government and thus results in some taxpayers subsidizing the public information requests of other taxpayers. This subsidy is especially inequitable when one considers that 86 percent of the FOI requests received by FDA are from corporations, FOI service companies, and private attorneys—groups best able to bear the cost of obtaining records from FDA. The taxpayers are thus subsidizing the "industrial espionage" engaged in by many commercial organizations who use the FOIA to obtain information about their competitors. The HEW fee schedule also means that agency personnel who would otherwise be engaged in regulatory activities are instead spending their time responding to FOI requests without the government being reimbursed for the actual cost of the time spent locating requested records.

The Commissioner has been closely monitoring the results of the HEW fee schedule and concludes that the circumstances warrant an increase in the fee schedule to reflect actual costs to the government. The Commissioner has initiated discussions with the appropriate officials in HEW regarding the fee schedule and anticipates that the FDA fee schedule will soon be revised to reflect the actual costs incurred by the agency in searching for requested records. A new fee schedule reflecting actual costs to the government, coupled with the liberalization of the FDA policy on waiver or reduction of fees discussed elsewhere in this preamble, will be more equitable and fully in agreement with the policy in the FOIA providing for charging fees and for waiver or reduction of those fees when that is in the public interest.

WAIVER OF FEES

27. Experience in recent months suggests that there may be some confusion among both the public and agency employees about the FDA policy on waiver or reduction of fees under § 4.43 (21 CFR 4.43). The Commissioner is restating the agency's policy to avoid further confusion.

Section 4.43 establishes two distinct bases for obtaining waiver or reduction of fees: paragraph (b) of the section provides that the fees may be waived if the person making the request is: (1) indigent and (2) the disclosure has a "strong public interest justification." Paragraph (c) of the section, on the other hand, provides that the fees may be waived or reduced when the waiver or reduction is in the public interest "because furnishing the information can be considered primarily as benefiting the general public." No showing of indigency is required for a waiver or reduction of fees under § 4.43(c). To obtain consideration of a request for waiver or reduction under paragraph (c), however, the request must be accompanied by a statement of the intended purpose to which the requested information will be put. This statement enables FDA to determine whether the intended use will benefit the public generally.

The Commissioner emphasizes that narrow and specific requests for records are much more likely to meet the standard in paragraph (c) than requests that are vague and open-ended. Similarly, requests for documents intended to be used in connection with administrative proceedings before FDA, e.g., formal evidentiary hearings, are more likely to satisfy the standard than requests for documents that do not relate to a pending or potential formal or informal administrative proceeding. For example, two public interest organizations that desired to participate in the hearing on the withdrawal of the new animal drug approvals (NADA's) for diethylstilbestrol (DES) sought and obtained waiver

of fees in connection with their requests for copies of the requests for hearing filed by various holders of approved NADA's for DES. On the other hand, FDA frequently receives and denies requests for waiver of fees in connection with general requests for agency records from public interest groups where the sole basis for the waiver is that the request for waiver of fees in connection limited resources of the agency do not permit FDA to routinely provide records free of charge to all public interest groups.

The Commissioner advises that FDA is fully committed to the policies embodied in the waiver of fees provision of the FOIA and intends to interpret liberally those provisions and § 4.43. The Food and Drug Administration will give careful and sympathetic consideration to requests for waiver or reduction of fees that are submitted in accordance with § 4.43. The Commissioner encourages persons to seek waiver or reduction of the fees under § 4.43(c) when disclosure of the records sought will broadly promote the public interest. To facilitate consideration of requests for waiver of fees, the directors of the various bureaus within FDA will evaluate the requests and recommend to the Assistant Commissioner for Public Affairs those requests that are meritorious.

PRESUBMISSION REVIEW OF REQUEST FOR CONFIDENTIALITY OF VOLUNTARILY SUBMITTED DATA OR INFORMATION

28. One comment requested that FDA pledge not to revoke assurances of confidentiality given respecting data and information submitted under § 4.44 (21 CFR 4.44) for a presubmission determination of confidentiality.

The Commissioner advises that material received by FDA for presubmission review under § 4.44 and accepted in confidence pursuant to a letter signed by the Assistant Commissioner for Public Affairs pledging confidentiality will remain confidential unless a court order directs that it be disclosed or the status of the material is affeced by external factors, e.g., the company that submitted the material discloses it to a member of the public subsequent to its submission to the agency.

29. One comment requested that persons who submit information for presubmission review under § 4.44 be advised within 10 working days after receipt of the records by FDA whether the material qualifies for such review.

The Commissioner concludes that prescribing a fixed number of days for notifying persons who have submitted information for presubmission review is not feasible. The time required to review the material will vary according to the number and complexity of the documents submitted, among other variables. After receipt of the information by FDA, persons will be notified as soon as possible as to whether the material qualifies for presubmission review.

30. One comment requested that § 4.44 be revised to state that a person who voluntarily submits material to FDA but does not seek presubmission review does not waive any right subsequently to assert confidentiality or bar a subsequent determination by the agency to that effect.

The Commissioner concurs with this comment and concludes that no change in the regulation is needed to implement it. Presubmission review is not a mandatory procedure. A decision not to seek such review does not bar either a subsequent assertion of confidentiality by the submitting person or a finding of confidentiality by the agency. Neither a subsequent assertion of confidentiality by the person who submitted the information nor a finding of confidentiality by FDA would, however, invoke the presubmission review procedures provided in § 4.44 or require FDA to consult or give notice.

31. One comment requested that § 4.29 (21 CFR 4.29) be revised to permit persons who have previously voluntarily submitted data and information to FDA to resubmit such information for review under § 4.44.

The Commissioner concludes that, for all practical purposes, this comment requests that FDA permit material to be withdrawn from its files. No purpose would be served by allowing presubmission review under § 4.44 of material previously submitted voluntarily unless the submitting person was also permitted to withdraw and retain information for which no pledge of confidentiality was given. The Commissioner accordingly sees no difference between this comment and those comments requesting that persons be permitted to withdraw information from government files without any reference to resubmitting the information. The Commissioner rejects this suggestion for the reasons previously stated.

32. Questions have arisen about the status of records submitted for presubmission review when those records are ineligible for presubmission review either because their status under these regulations is clearly specified or because the submission is not voluntary, i.e., the submitter is under a legal obligation to provide the records to FDA upon request.

The Commissioner advises that records submitted for presubmission review that are ineligible for such review because the submission is not voluntary within the meaning of the regulations will be retained as part of the FDA permanent files and the submitter will be so notified. Records that are voluntarily submitted but are nonetheless ineligible for presubmission review because their status under the regulations is clear will be returned to the submitter, without complete review. The Commissioner admonishes persons to use the presubmission review procedure sparingly and only when appropriate. Abuse of the procedure may cause the agency to reconsider the procedure's utility.

SITUATIONS IN WHICH CONFIDENTIALITY IS UNCERTAIN

33. A number of comments requested clarification of the standard for consultation under § 4.45 (21 CFR 4.45). It was noted that paragraphs 62 and 63 of the preamble to the December 24, 1974 final regulation and § 4.45, respectively, describe the situation in which FDA will notify the person whose records are requested when there is "some question" or a "close question" as to the status of the material or when the status is "uncertain." The comments asserted that the "some question" standard is the appropriate one.

The Commissioner advises that the phrases "some question," "close question," and "uncertain status" will be construed as identical in meaning. The Commissioner rejects any implication that the use of the phrase "some question" in the preamble suggests a standard for consultation that is less rigorous than either the "close question" description in the preamble or the "uncertain status" language of § 4.45.

The Commissioner emphasizes that FDA will not consult with the submitting person in every instance in which any argument, however tenuous, can be made in support of the confidentiality of the requested material and will not consult if the argument would simply be that these regulations are wrong. The question about the confidentiality of the requested record must be such that a reasonable basis for confidentiality exists before consultation will be pursued.

34. Several comments pointed out that § 4.45 provides no time period for consultation and that in cases of uncertain confidentiality it was unlikely that FDA would be able to review, consult, and make a determination on a request for public disclosure within 10 working days. To provide for adequate time for consultation, it was suggested that the requestor be asked to agree to a specific extension of time; in the event that no extension is agreed upon and the 10-working-day limit cannot be met, the request should be denied. The alternatives, it was suggested, would be to grant the request on the basis of insufficient information, to ignore the 10-working-day requirement and thereby lose the 20 days to review an appeal of a denial, or to deny the request. Denial, it was asserted, would permit FDA to use the additional 20 days for consultation and review and ultimately either affirm the denial or reverse it and grant the request.

The Commissioner concludes that the suggestion is too complicated to administer and is unnecessary, and therefore it is rejected. If ongoing consultation makes a determination within 10 working days impossible, an interim response may appropriately be sent to the requestor to inform him that FDA is working on the request and that a final and complete determination will be made as soon as possible.

35. Questions have arisen about whether consultation under § 4.45 will be with only the person who submitted the records or with both that person and persons who might be affected by disclosure.

The Commissioner advises that consultation under § 4.45 will be with those persons who, in the agency's judgment, are likely to be able to assist FDA in

determining the confidentiality of the requested records. In most instances consultation with the person who submitted the records will be sufficient to make the determination. The decision about whom to consult will, of necessity, have to be handled on a case-by-case basis.

36. Several comments on §§ 4.45 and 4.46 (21 CFR 4.45 and 4.46) dealt with matters raised, fully discussed, and disposed of in the preamble to the December 24, 1974 final regulation. One comment, for example, expressed the fear that decisions on the necessity for consultation will be made by low level clerical staff. Paragraph 62 of the preamble to the final regulation makes it clear that decisions on whether the status of requested records is uncertain will be made by those persons administratively responsible for making disclosure decisions.

PREDISCLOSURE NOTICE

37. By far the greatest number of comments related to § 4.45 and the circumstances in which FDA will provide predisclosure notice of the agency's intention to disclose certain records to the person who submitted them. Most comments contended that FDA should consult with the person who submitted the records, or whose data and information are contained in them, in every case in which the agency intends to disclose the records in response to a request under the FOIA. The general theme throughout these comments is that FDA cannot, consistent with due process, release material, including that submitted to the agency ostensibly pursuant to a pledge of confidentiality, without first providing notice to the person who submitted the data and information.

On May 6, 1975, the Pharmaceutical Manufacturers Association (PMA) filed suit in the United States District Court for the District of Columbia (*Pharmaceutical Manufacturers Association* v. *Weinberger*, No. 75-0725, D.D.C.) seeking an order declaring invalid and enjoining the enforcement of certain provisions of the December 24, 1974 final regulation. The primary issue in the lawsuit was whether member companies of PMA are entitled to administrative notice of, and an opportunity to consult with FDA on, every contemplated disclosure by the agency of information submitted by, obtained from, or pertaining to them or their products. On August 1, 1975, PMA's Motion for a Preliminary Injunction on the notice and consultation issue was denied by the District Court for the District of Columbia (401 F. Supp. 444 (D.D.C. (Sirica, J.) 1975)). Thereafter, in granting the FDA Motion for Summary Judgment as to all the issues in the lawsuit, the court reaffirmed that notice and an opportunity for consultation with FDA in advance of every contemplated disclosure is not required (411 F. Supp. 576 (D.D.C. (Smith, J.) 1976)). The Pharmaceutical Manufacturers Association has announced that it does not intend to appeal this decision.

The Commissioner advises that when the status of requested records is uncertain, notice and consultation with the submitting person under § 4.45 will be undertaken. In those situations, FDA may request additional information from the submitting person in order to determine whether the requested records are disclosable. In all other situations, that is, when the status of the requested records can be determined by FDA and is not "close" or "uncertain," the agency will proceed to make a determination in accordance with the FOIA and the regulations. The Commissioner is confident that the notice and consultation provisions in § 4.45 adequately protect the rights of persons who have submitted data and information to FDA.

Persons who become aware of the impending release of records containing data or information submitted by them pursuant to § 4.45, as a subscriber to the commercial services that provide this type of information, or in any other fashion, and who believe that the records should not be disclosed, may institute suit against FDA to enjoin the release of the requested records. If instituted in timely fashion, the agency will not release the records, pending judicial resolution of the suit, unless directed by court order to do so. FDA will not deprive any person of the opportunity to pursue a timely instituted court action to enjoin the release of records by disclosing the records and thereby mooting the judicial proceedings.

The Commissioner emphasizes, as he did in the preamble to the final regulation of December 24, 1974, that the proper remedy for any person who in the past has submitted to FDA data or information that he believes to be confidential, but which, under the final regulations, is included within a category that is subject to public disclosure, is to bring a declaratory judgment action contesting the validity of that portion of the regulations. All persons have been put on notice that records in the FDA files will be handled in accordance with these regulations. Notice to all affected persons of each request for records submitted by them or which identifies them or their products is, as stated in the preamble to the December 24, 1974 final regulation, "unnecessary as well as impracticable."

38. A number of comments contended that administrative due process would not be satisfied even if FDA, upon receipt of a request for records in the agency files, notified the submitter and all affected persons of an intended disclosure. These comments asserted that, in all instances of planned release, not only must notice be given, but the agency must provide the submitter an opportunity to consult with it and to present objections to the release, as well as an intra-agency appeal mechanism.

The Commissioner concludes, for the reasons stated in paragraph 37 of this preamble, that notice, an opportunity to consult with FDA and present objections, and an intra-agency appeal mechanism, as suggested in the comment, are unnecessary, impracticable, and not legally required.

39. Comments contended that it is anomalous that a person requesting access to agency records, if refused, has a clearly defined appeal procedure whereas the submitter and persons who might be affected by disclosure do not have assurance even of notice and an opportunity to be heard before release. It was argued that this places the submitter, with a potential property right in the requested data and information, in a procedurally inferior position to the party requesting the records, who clearly has no property interest in them.

The Commissioner advises that this is the procedure established by Congress in the FOIA. Congress has concluded that all documents submitted to the government become public property i.e., available to the public, subject to narrow exceptions, and has accordingly provided for a statutory right of appeal only by the requesting party.

40. Numerous comments contended that the assertion by the agency that the administrative burden or inconvenience of giving notice is too great was rejected in the case of *American Sumatra Tobacco Corp.* v. *SEC*, 93 F. 2d 236 (D.C. Cir. 1937). It was suggested that the agency assess submitters and affected persons the costs of sending notice.

The Commissioner has stated previously, in paragraph 96 of the preamble to the December 24, 1974 final regulation, that the general principles laid down in the *Sumatra* case have been fully satisfied. The *Sumatra* case does not require notice and an opportunity to consult in advance of every disclosure of privately generated information. This position was sustained in *PMA* v. *Weinberger*, 401 F. Supp. at 447–448. The Commissioner has also concluded in the preamble to the December 24, 1974 final regulation and elsewhere in this preamble that the FOIA does not require that notice be given to submitting persons or persons who might be affected by disclosure, and that such notice in all instances would be impracticable. The money that is generated by any fee under these regulations must be paid to the United States Treasury, and cannot be used by the agency to finance its public information services.

41. One comment contended that Congress, in enacting section 6(b)(1) of the Consumer Product Safety Act (15 U.S.C. 2055(b)(1)), reflected its intent that, at least with respect to the Consumer Product Safety Commission, "not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed * * * in connection therewith * * * the Commission shall, to the extent practicable, notify, and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains * * *." The comment argued that this section represents a recent congressional statement on the advisability of advance notice to submitters and persons who might be affected by disclosure and that this procedure should be followed by FDA.

The Commissioner does not agree with this comment. Neither the FOIA nor the Federal Food, Drug, and Cosmetic Act contains provisions similar to section 6(b)(1) of the Consumer Product Safety Act. To the extent that section 6(b)(1) can be said to require notice to submitting persons and persons who might be affected by disclosure, its provisions are not applicable to FDA.

42. One comment pointed to the notice provisions of the public information regulations of the Environmental Protection Agency (40 CFR 2.105(b) and 2.107(a)) as a model for FDA to follow.

The Commissioner concludes that the notice provisions of the public information regulations of the Environmental Protection Agency are not required by the FOIA, and, given the number of requests received by FDA, adoption of a similar notice provision would be an unmanageable administrative burden that would impair the ability of the agency to adhere to the 10-day requirement for ruling on requests as mandated by the 1974 amendments to the FOIA and to carry out its important regulatory functions.

43. One comment requested that whenever FDA discloses records to special government employees under 21 CFR 4.84, other Federal departments or agencies under 21 CFR 4.85, State and local government officials under 21 CFR 4.88, and officials of foreign governments under 21 CFR 4.89, the person who submitted the information to FDA be given notice consisting of the date, actual content, and person to whom the disclosure was made.

The Commissioner advises that all the classes of persons referred to in the comment have a special status entitling them to the information, and they are prohibited from releasing data and information that is exempt from disclosure, such as trade secrets, in the same fashion and to the same extent as all employees of FDA. No purpose would be served by providing notice of the sort requested when disclosures are made in accordance with the regulations to persons in those categories.

44. Another comment asserted that under no circumstances should notice to affected persons be given because such notice permits the submitter to attempt to persuade FDA that the request should be denied, and the requestor has no similar opportunity to persuade the agency that the request should be granted.

The Commissioner does not agree with the position expressed in this comment. On the limited occasions when the confidentiality of a requested record is uncertain, consultation with the submitting person and other persons to obtain additional information related to the status of the record is essential if a proper determination is to be made by FDA. Consultation under § 4.45 (21 CFR 4.45) is not an opportunity for affected persons to persuade the agency, by argument alone, not to release the requested material. It is, rather, an opportunity for the agency to examine and consider additional data and information not otherwise available to it, which will be of assistance in making a correct determination respecting the confidentiality of the requested record.

JUDICIAL REVIEW OF PROPOSED DISCLOSURE

45. A number of comments stated that the 5 days provided in § 4.46 (21 CFR 4.46) within which to institute suit to enjoin the release of records is an inadequate period of time for affected persons to make the decision to seek an injunction and to prepare and file the appropriate pleadings. It was variously suggested that 10, 15, or 20 days, or 10 working days, be provided within which to institute suit. One comment suggested that 5 days be provided to notify FDA of the intent to sue and an additional 90 days within which to institute suit. If no court suit was initiated after 90 days, the comment suggested, FDA could then release the material.

The Commissioner concludes that the 5-day period is adequate time for the appropriate pleadings to be filed. The Commissioner notes that the complaint for injunction and supporting documents necessary to institute suit are simple and can easily be prepared in advance as standard legal pleadings and held ready should the occasion for their use arise. Legal counsel for several companies regulated by FDA have in fact publicly made the suggestion that the appropriate pleadings be prepared in advance. The Commissioner also notes that in the 4 years since the proposed rule making was published and documents released in accordance with its provisions, only one suit to enjoin disclosure of specific records has been instituted.

46. One comment objected to any time period for the institution of suit to enjoin the release of records and argued that once FDA determines to disclose records, those records should be made available immediately to the requesting party.

The Commissioner regards the provision of a limited time period for the institution of suit to enjoin the release of records when confidentiality is uncertain and FDA has determined to release the records as reasonable and consistent with the provisions of the FOIA and its mandate.

DENIAL OF REQUEST FOR RECORDS

47. Questions have arisen about the circumstances in which FDA will, under § 4.47(d) (21 CFR 4.47(d)), delete certain information from requested records without treating the deletions as a denial of the request. Concern has been expressed that persons making a request for records who subsequently receive records with certain information deleted may not always realize that deletions have been made or that they may appeal those deletions to the Assistant Secretary for Health, Department of Health, Education, and Welfare.

The Commisioner advises that it has been the consistent policy of FDA to treat substantial deletions of material from a record that is nevertheless disclosed as a denial and FDA has accordingly informed the person who made the request of his appeal rights. In order that there be no question about this policy, § 4.47(d) is revised to apply explicitly only to minor deletions of nondisclosable data and information from otherwise disclosable records.

The Commissioner further advises that the agency's policy with respect to minor deletions of nondisclosable data and information from disclosable records is to identify clearly such deletions on the record that is disclosed, but not to view such minor deletions as a withholding of the requested record. This policy is premised on three considerations. The majority of records in the files of FDA are disclosable to the public under the regulations. However, a large number of these clearly disposable records do contain small items of data and information that under the FOIA exemptions and the regulations, are exempt from disclosure. Deletions are, therefore, common.

For example, FDA receives many requests for adverse drug reaction reports that are submitted to the agency by physicians, hospitals, and drug manufacturers. In many cases, these reports contain the name and address of the patient who incurred the adverse reaction as well as the name and address of the physician or institution submitting the report. In order to protect the personal privacy of such persons, it is standard practice to delete the name and address as well as any other identifying details from adverse reaction reports. This policy is clearly stated in §§ 4.63 and 4.111 (21 CFR 4.63 and 4.111) and is unquestionably consistent with the sixth exemption of the FOIA (5 U.S.C. 552(b)(6)).

Deletions of this sort, minor in nature, ubiquitous, and clearly authorized by the FOIA, the regulations of HEW that implement the act (45 CFR 5.71(a)) and these regulations (§§ 4.63 and 4.111), have not been treated by the agency as denials. Furthermore, in the Commissioner's view, persons making requests to FDA for records ordinarily fully expect that minor deletions will, of necessity, be made and that their requests do not encompass the types of data and information that are regularly deleted before disclosure. This is particularly so because a large number of the FOI requests received by the agency are from persons who frequently make such requests and who are, no doubt, familiar with the agency's public information regulations and practices. Finally, under the 1974 amendments to the FOIA, agencies are required to disclose "[a]ny reasonably segregable portion of a record" after deleting exempt portions (5 U.S.C. 552(b)). It would be anomalous if Congress intended this amendment to result in denials of requests. It was obviously the intent of Congress that more disclosures would result, not more denials.

In view of these considerations, the Commissioner believes that the agency's policy regarding minor deletions is consistent with the FOIA. Nevertheless, to assure that all persons who request records from FDA fully understand the policy of the agency regarding minor deletions, the Commissioner has recently instituted a policy of including in every

letter of determination issued by the agency granting a request for records that, when disclosed, will contain minor deletions, a paragraph that (a) calls attention to the deletions; (b) states that the agency assumes that the deleted material was not intended to be covered by the request; (c) indicates that if the agency's assumption is erroneous, the person making the request should advise the agency that he or she does indeed desire to receive the deleted material; and (d) states that if the agency should then deny the requested additional information, a letter would issue that fully explains the appeal rights and procedure available to the person making the request. The Commissioner is confident that this policy will preclude any misunderstanding by persons requesting records from the agency when the records that are disclosed contain minor deletions.

USE OF PRIVATE CONTRACTOR FOR COPYING

48. A few comments requested that § 4.51 (21 CFR 4.51) be revised to provide that a private contractor will not be used for copying when a record contains disclosable and nondisclosable material unless the contractor agrees in writing not to disclose the material to anyone and adequate precautions are taken by FDA to guard against the loss of or failure to return records loaned for copying purposes.

The Commissioner concludes that the recommendation is unnecessary. Ordinarily records containing nondisclosable material will not be provided to a private contractor for copying. In the rare circumstance that this might occur, the safeguards suggested in the comment would be established as a matter of course.

INDEXING TRADE SECRET AND CONFIDENTIAL COMMERCIAL OR FINANCIAL DATA AND INFORMATION

49. A number of comments contended that, when suit is instituted challenging the denial of records or portions thereof on the basis of the exemption for trade secrets and confidential commercial or financial information, FDA may neither waive its obligation to itemize and index the disputed material nor require the intervention of the affected person. It was argued that requiring the intervention of the affected person would unfairly put smaller manufacturers at a disadvantage in that they might not be financially or physically able to itemize, index, and defend every suit involving the trade secret status of their material. It was suggested that the smaller manufacturer would have no choice but to defend only those suits involving large amounts of assertedly valuable trade secret material.

The Commissioner concludes, for the reasons stated in paragraph 73 of the preamble to the December 24, 1974 final regulation, that the requirement that the person who submitted the disputed documents index and itemize those documents and intervene to defend their trade secret status is an appropriate requirement. The Commissioner again emphasizes that, regardless of size, the affected person is in the best position to present a trade secret defense to the court.

Section 4.53 (21 CFR 4.53) is revised to state more clearly that the failure of the affected person to intervene to defend the exempt status of the records or, if the court requires, to itemize and index such disputed documents, will constitute a waiver of any trade secret defense, and FDA will promptly make the quested records available for public disclosure.

50. One comment contended that § 4.53 of the final regulations reflects a misconception on the part of FDA about the interests Congress was protecting in exempting trade secret and confidential commercial or financial information from disclosure. It was argued that the exemption is based on the recognition by Congress that there are both private and public interests to be served by protecting the confidentiality of trade secret and confidential commercial or financial information. It was asserted that, by proposing to waive its obligation to defend the trade secret status of disputed material, FDA does not appear to be aware of the public interest in protecting trade secret material from disclosure.

The Commissioner advises that FDA is cognizant of the congressional recognition that both public and private interests are served by protecting the confidentiality of trade secret and confidential commercial or financial information. The Commissioner, notes, however, that the private interests and benefits are greater than the public interest involved, and the burden of defending the status is appropriately borne by private interests who are in the best position to explain why data are valuable commercial secrets.

51. One comment suggested that the requirement in § 4.53 that the affected person itemize and index disputed trade secret material be retained but that a requirement that the affected person assist FDA in defending the trade secret status of the disputed material be substituted for the requirement of intervention by the affected person. It was also noted that, if a court declined to permit an affected person to intervene for some unknown reason, § 4.53 would allow the release of the disputed material.

The Commissioner concludes that there is no significant difference between requiring the person affected by disclosure to intervene in a suit to defend the trade secret status of the disputed information and requiring that an affected person assist FDA in defending such a suit. In either formulation of the requirement, FDA will insist upon formal intervention by the affected person and that, upon intervention, that person bear the burden of defense. The Commissioner advises that, in the extremely unlikely event that a court declines to permit intervention of an affected person, FDA will consider a request for an exception to the requirements of § 4.53 to the extent that the affected person could not, under the circumstances, formally intervene. All other obligations imposed upon the affected person by § 4.53 would remain in effect.

CLEARLY UNWARRANTED INVASIONS OF PERSONAL PRIVACY

52. Comments have asked whether the names of clinical investigators will generally be disclosed. A seeming inconsistency was noted between § 4.63(d) and §§ 314.14(e)(2)(i)(a) and 314.14(e)(4) (21 CFR 314.14(e)(2)(i)(a) and (e)(4)) in that § 4.63(d) appears to provide that the names of investigators will be disclosed, absent extraordinary circumstances, while §§ 314.14(e)(2)(i)(a) and 314.14(e)(4) appear to state that the names of investigators will not be disclosed. Paragraphs 117 and 241 of the preamble to the December 24, 1974 regulation, it was stated, also reflect this inconsistency.

The Commissioner advises that § 4.63(d) states that, as a general rule and in the absence of extraordinary circumstances, the names of individuals, including clinical investigators, will not be deleted from records before disclosure. Section 314.14(e)(2)(i)(a) applies to safety and effectiveness summaries for new drug applications (NDA's) approved prior to July 1, 1975. Those summaries consist of internal agency records that describe safety and efficacy data and information. The names of investigators and any information that identifies them will be deleted because, when those internal memoranda were prepared, there was no thought that they might ever be made public and comments were often included that would otherwise have been omitted if intended for public dissemination.

The names of, and any other information that would identify, third parties such as physicians, hospitals, investigators involved with adverse reaction reports, product experience reports, consumer complaints, and similar data and information voluntarily submitted to FDA will not be disclosed under § 314.14(e)(4). The names of investigators and any information that would identify them that is contained in an NDA file after an approval letter is sent will be disclosed as a part of safety and effectiveness summaries for new drugs approved after July 1, 1975, in accordance with § 4.63(d). Neither the names of investigators nor identifying information contained in an investigational new drug notice (IND) or NDA file will be disclosed before an approval letter is sent.

53. One comment noted a seeming inconsistency in that, although § 4.63(a) provides for the deletion of the names and information that would identify patients in medical and similar files and makes no mention of disclosure upon a showing of extraordinary circumstances, paragraph 103 of the preamble to the December 24, 1974 final regulation states that disclosure of the names and information is unwarranted except in extraordinary circumstances.

The Commissioner advises that the right of privacy of individuals is paramount and that FDA will not release the names and other information that would identify patients in medical and similar files, where such release would constitute a clearly unwarranted invasion of per-

sonal privacy. Section 4.82 (21 CFR 4.82) so provides. Upon further consideration, the Commissioner concludes that paragraph 103 of the preamble was in error, and should be revoked, to the extent that it stated that there would lie an "extraordinary circumstances" exception to this rule. The Commissioner anticipates no such exceptions.

54. Questions have arisen about the status of records relating to FDA investigations of clinical investigators. In particular, requests have been received for records concerning the disqualification of individual investigators, lists of all investigators who have ever been disqualified by FDA, and records relating to investigators who have been investigated by FDA but who were not disqualified.

The Commissioner advises that upon the completion of an investigation of a clinical investigator and any regulatory action that may ensue, e.g., a hearing under Subpart F of Part 2, published in the FEDERAL REGISTER of November 2, 1976 (41 FR 48258), records relating to the investigation, including most intra-agency memoranda, will be available to the public. Disclosure of records before the completion of the investigation would ordinarily interfere with the investigation; the records are therefore exempt under the seventh exemption of the FOIA (5 U.S.C. 552(b)(7)) and § 4.64 (21 CFR 4.64). The public, however, has a substantial interest in FDA investigations of clinical investigators; upon completion of an investigation, disclosure of the records is not a clearly unwarranted invasion of personal privacy. Records of the investigation that contain patient names and identifying details will be disclosed only after such information is deleted.

55. Questions have arisen about whether medical records or reports of adverse drug reactions are available to the subject of the records.

The Commissioner advises that medical records and adverse drug reaction reports are available to the individual who is the subject of the reports. Such records would not, under § 4.111(c)(3)(vi), be available to a third person without the written consent of the subject. However, an individual's privacy is obviously not invaded when he obtains his own medical records or adverse drug reaction report. The Commissioner notes, however, that FDA seldom obtains medical records, and has received only a few requests from persons for their own medical records. Section 4.111(c)(3)(vi) is revised to clarify this policy.

DATA AND INFORMATION PREVIOUSLY DISCLOSED TO THE PUBLIC

56. Comments asserted that the disclosure of trade secret information on a limited basis to physicians, veterinarians, or other health professionals for their use in caring for patients should not result in the loss of the confidentiality of the information. The comments argued that such limited disclosures would not prevent the company that disclosed the information from maintaining a suit against a competitor who had unlawfully obtained the same information and should therefore not be deemed by FDA to be disclosure to any member of the public.

The Commissioner advises that the substance of this comment was raised and fully discussed in several paragraphs of the preamble to the December 24, 1974 regulation. The Freedom of Information Act does not contemplate selective availability of records to the public. Trade secrets must either be protected as such by the owner or they will be disclosed by the agency. This position was upheld in the opinion of Judge Smith in *PMA* v. *Weinberger*, supra.

57. Comments suggested that data and information otherwise exempt from disclosure should not lose their confidential status by virtue of disclosure to "any" member of the public. As an alternative test, one comment suggested that the confidentiality of previously disclosed information be recognized by FDA unless the information had been disseminated to members of the public on a general basis so that the information is available generally to competitors. Another comment suggested that the appropriate test is whether good faith efforts to prevent widespread disclosure had been taken.

The Commissioner advises that use of either of the tests suggested in the comment would make decisions under the FOIA highly inconsistent and would require FDA to make an extensive ad hoc inquiry into the extent to which the information has been disseminated to the public, the extent of its availability to competitors, and the nature of the efforts taken to prevent widespread disclosure as well as a determination that those efforts were made in good faith. Such an approach is neither practicable nor contemplated by the law. The test provided for in § 4.81 (21 CFR 4.81) for determining whether the information has been disclosed to any member of the public is more practicable, can be applied consistently by the agency, and is fully consistent with the congressional mandate that records be disclosed unless they fall within the narrow exemptions specified.

58. One comment suggested that if previous disclosure to the public is asserted as the basis for disclosure of otherwise exempt material, the submitting person be given an opportunity to demonstrate that the disclosure, if in fact it occurred, was made with appropriate safeguards, was inadvertent or extremely limited in scope, or that in spite of the disclosure the information is not generally known outside of his business and is of appreciable value.

The Commissioner rejects this suggestion. If previous disclosure to the public is asserted as the basis for disclosure of otherwise exempt material, the only issue to be decided before a determination is made on the request is whether the initial disclosure was lawful. If it was, the records will be released. If the initial disclosure was unlawful and the material is exempt from disclosure, the request will be denied. In short, the circumstances surrounding the initial disclosure are relevent only insofar as they relate to the determination of whether the initial disclosure was lawful.

59. Questions have arisen about whether the disclosure of trade secret material to a foreign government as a condition for obtaining marketing approval constitutes disclosure to any member of the public within the meaning of § 4.81.

The Commissioner advises that disclosure to any Federal, foreign, State or local government or government official, on an official basis, does not constitute disclosure to any member of the public within the meaning of § 4.81.

60. A question has arisen about whether the disclosure of trade secret information regarding an investigational new animal drug notice or new animal drug application to inspectors of the Animal Plant Health Inspection Service, U.S. Department of Agriculture, or to a slaughter house in order to secure permission to slaughter animals for clinical research purposes, would result in the loss of the confidentiality of the information disclosed.

The Commissioner advises that the Animal and Plant Health Inspection Service is a governmental entity and that the disclosure of confidential information to it would not constitute disclosure to the public. Disclosure to a slaughter house in the situation described would be a necessary disclosure in the course of a routine business relationship within the meaning of § 4.81(a) and, if done with appropriate safeguards to minimize the extent of the disclosure, also would not constitute disclosure to the public.

61. In the FEDERAL REGISTER of March 4, 1976 (41 FR 9317), the Commissioner amended § 4.81 by adding a new paragraph (a)(3). The amendment, which was made effective immediately, codified existing FDA practice and clarified § 4.81 to state explicitly that disclosures to clinical investigators and institutional review committees do not result in a loss of confidentiality for the information disclosed.

DISCRETIONARY DISCLOSURE BY THE COMMISSIONER

62. A few comments asserted that there is no statutory basis for the discretionary disclosure of information by the Commissioner as provided for in § 4.82. (21 CFR 4.82). It was suggested that, if this provision is retained, provision be made for judicial review of the FDA decision to disclose the information before any disclosure is made.

The Commissioner concludes that there is no support in the FOIA for accepting this comment. With the exceptions of trade secret material protected from disclosure by section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) and 18 U.S.C. 1905 and records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the statutory exemptions are permissive. Agencies and departments subject to the FOIA may decide not to disclose exempt material; they are not required to withhold it. The statute expressly commits to the discretion of

the Commissioner, as the head of the agency, the decision whether exempted material should be disclosed.

63. One comment noted the apparent absence of any standards or guidelines for the exercise of discretionary disclosure by the Commisisoner and asserted that, without such standards or guidelines, any discretionary disclosures by the Commissioner would constitute unreasonable and arbitrary administrative action.

The Commissioner advises that the FOIA clearly embodies the concept of discretionary disclosure and contains no standards for the exercise of that discretion. This is a matter that is committed by law to the discretion of the Commissioner. It would be consistent with the FOIA for the Commissioner to decide that all material covered by one of the exemptions in that act should be disclosed under all circumstances, except when the material is prohibited from disclosure by section 301(j) and 18 U.S.C. 1905. Having decided not to adopt that alternative, it is clearly within the Commissioner's prerogative to make discretionary disclosures of material otherwise exempt from mandatory disclosure when he determines that disclosure would be in the public interest and release is not otherwise prohibited by law.

64. Questions have arisen about whether there are any circumstances in which a consultant, i.e., a special government employee, may submit written comments to FDA with respect to a pending matter published in the FEDERAL REGISTER, e.g., a proposal or petition, without having those comments placed on display in the office of the Hearing Clerk with all other written comments.

The Commissioner advises that, as a general rule, the written comments of special government employees on any pending matter published in the FEDERAL REGISTER will be placed on display in the office of the Hearing Clerk along with all other comments. This policy was stated in paragraph 128 of the preamble to the December 24, 1974 regulations.

In one particular circumstance, however, the Commissioner has decided that the written comments of a special government employee will not be placed on public display in the office of the Hearing Clerk. Whenever a matter that has appeared in the FEDERAL REGISTER is specifically referred to a consultant for consideration as part of his official duties as a consultant, the consultant may submit his comments to the agency without the necessity that they be placed on public display in the office of the Hearing Clerk. This is true whether the consultant is a member of an advisory committee or is an ad hoc consultant. Nondisclosure of such comments is justified by the exemption for inter- and intra-agency memoranda under 5 U.S.C. 552 (b)(5).

Comments received from consultants who have not been specifically and officially requested to comment will remain subject to the provisions in paragraph 128, i.e., the comments will be placed on display with all other comments.

DISCLOSURE IN ADMINISTRATIVE OR COURT PROCEEDINGS

65. Minor clarifying amendments are made in § 4.86 (21 CFR 4.86).

COMMUNICATIONS WITH STATE AND LOCAL GOVERNMENT OFFICIALS

66. One comment contended that all communications between FDA and State or local government officials not under Commission or contract to FDA that pertain to the development of uniform Federal-State enforcement policies should be exempt from disclosure for the duration of the deliberations on uniform policies, or longer, if so requested by a participating State or local government official. Other comments supported the provisions in § 4.88 (21 CFR 4.88) for the exchange of certain information between Federal, State, and local officials on a confidential basis.

The Commissioner concludes that § 4.88 ordinarily provides adequate protection to maintain the confidentiality of communications between Federal, State and local officials and need not now be changed. The Commissioner is confident that § 4.88 will permit, as some comments have noted, government officials on all levels to communicate in confidence on law enforcement matters as necessary to fulfill their respective responsibilities to the public.

ADMINISTRATIVE ENFORCEMENT RECORDS

67. One comment objected to the availability for disclosure to any member of the public of records relating to administrative enforcement action at the time disclosure is first made. Fundamental fairness, it was said, dictates that the person who is the subject of the administrative enforcement action be given an opportunity to receive the records before they are made available to the public generally. It was suggested that the records be sent by registered mail, return receipt requested, to the person who is the subject of the action and that no subsequent disclosures be made until FDA receives the return receipt.

The Commissioner concludes that the recommendation is too cumbersome to administer and would significantly add to the already complex recordkeeping duties necessary for ensuring compliance by the agency with the FOIA. Moreover, it is not permissible under the FOIA to distinguish between persons in determining whether records are available for disclosure.

68. One comment objected to the availability for public disclosure of Forms FD-483 and FD-2275 (lists of observations made during food and drug plant inspections) before the availability of the establishment inspection report (EIR). The comment stated that the factual information generally contained in Forms FD-483 or FD-2275 is the same as that in the EIR and that availability of such information may deprive persons of a fair trial or impartial adjudication.

The Commissioner concludes that any possible effect on a person's right to a fair trial or impartial adjudication caused by the release of Forms FD-483 or FD-2275 before the availability of the EIR is too remote and speculative to warrant a revision of the regulations. Those forms are given to the company that has been inspected and accordingly must be made available to the public contemporaneously with the initial disclosure.

FOOD AND DRUG ADMINISTRATION MANUALS

69. Paragraph 193 of the preamble to the December 24, 1974 final regulation contained a partial list of FDA manuals available to the public and a statement that "copies of these manuals may also be purchased at cost." Paragraph 193 also contained a statement that FDA does not maintain a mailing list for amendments to these manuals because of the prohibitive expense involved.

A substantial portion of the FOI requests received by FDA during fiscal years 1975 and 1976 were for FDA manuals. Additionally, because many of those manuals are frequently amended, many requests for the amendments have been received and, in a few instances, mailing lists maintained. The Commissioner is reconsidering the present agency policy of not generally maintaining mailing lists for amendments to FDA manuals and will soon explore various alternative mechanisms for maintaining mailing lists.

Additionally, the Commissioner believes that it would be useful, efficient, and in the public interest to develop a more expeditious system for making manuals available and maintaining mailing lists for them. The Commissioner has therefore initiated discussions with the National Technical Information Service (NTIS) in Springfield, Virginia, to determine whether NTIS could provide FDA manuals to the public promptly and at a reasonable cost and also maintain mailing lists for those manuals. The preliminary discussions between NTIS and FDA have been encouraging, and the Commissioner is confident that a satisfactory arrangement will be worked out in the very near future. The details of such an arrangement will be announced in the FEDERAL REGISTER. In the meantime, FDA manuals will continue to be available to the public from the FDA Public Records and Documents Center.

DATA AND INFORMATION OBTAINED BY CONTRACT

70. Questions have arisen as to whether cost and technical proposals submitted to the agency in response to a request for proposals will be disclosed.

The Commissioner concludes that all cost proposals and technical proposals that are not accepted by FDA are exempt from disclosure as confidential commercial or financial information. When a contract is awarded, however, there is generally no competitive advantage associated with any portion of the technical proposal of the successful contractor, and it will be available for public disclosure except to the extent that specific portions of the technical proposal are exempt from disclosure as trade

secrets or confidential commercial information under § 4.61. Section 4.109 (21 CFR 4.109) has been revised by the addition of a new paragraph to state this policy.

71. Paragraph 196 of the preamble to the December 24, 1974 final regulation stated that "all information obtained by the Food and Drug Administration through a contract is available for public disclosure * * *." Questions have arisen about the validity of contractual agreements entered into between FDA and outside organizations before the effective date of these regulations (January 23, 1975) that provide that no data and information obtained pursuant to the contract be disclosed to persons outside the agency.

The Commissioner advises that all such contractual agreements containing nondisclosure clauses will be honored by FDA except to the extent that a court orders otherwise.

72. Questions have arisen about whether there are any circumstances in which information may be purchased by FDA from an outside organization under a contract that precludes further dissemination. Reference was made to § 4.109 (21 CFR 4.109), which provides, without distinction, that "all data and information obtained by the Food and Drug Administration by contract * * * are available for public disclosure * * *" unless independently exempt, and to paragraph 196 of the preamble to the December 24, 1974 final regulations, which provides that "the Commissioner concludes that the Freedom of Information Act does not permit the Food and Drug Administration to purchase information under a contract that prohibits its further public distribution, unless the information is otherwise exempt from disclosure."

The Commissioner has reexamined this policy and concludes that a distinction should be made between the situation in which the agency is the sole purchaser of information and the one in which the agency is but one of a number of purchasers or subscribers, each of whom must agree not to distribute the information further as a condition for buying it. Reports obtained by contract from private organizations that are in the business of preparing and selling the reports with clauses restricting further dissemination to protect the value of the product can properly be considered the "stock-in-trade" of such firms. The fourth exemption under the Freedom of Information Act (5 U.S.C. 522(b)(4)) may be invoked to protect the reports from disclosure to the public. Disclosure would obviously destroy the value of the reports to the outside organization and a policy requiring disclosure seriously impairs the agency's ability to obtain the information, because outside organizations have refused and will continue to refuse to accept FDA as a purchaser. Both *Benson* v. *GSA*, 289 F. Supp. 590 (W.D. Wash.), aff'd, 415 F.2d 878 (9th Cir. 1968) and *National Parks and Conservation Assn.* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974) support this distinction.

73. Questions have arisen about whether the disclosability of results of testing and research conducted with agency funds by an outside organization pursuant to a contract is governed by § 4.105 (21 CFR 4.105) or § 4.109 (21 CFR 4.109).

The Commissioner advises that to the extent that a contract calls for data and information covered by § 4.105 as well as by § 4.109, disclosability of the data and information will be determined in accordance with § 4.105(c).

74. One comment requested that acceptance of a report for purposes of § 4.109 be defined as the point at which FDA begins to use the report for policy, enforcement, or other purposes.

The Commissioner advises that in some instances a report may be officially accepted before FDA begins to use it for policy, enforcement, or other purposes. Because of that possibility, no change is warranted in § 4.109.

SAFETY, EFFECTIVENESS, AND FUNCTIONALITY DATA AND INFORMATION CONTAINED IN COLOR ADDITIVE, FOOD ADDITIVE AND ANTIBIOTIC DRUG PETITIONS AND FORMS

75. Comments contended that the availability to the public of safety and functionality data contained in color and food additive petitions when the notice of filing of the petition is published in the FEDERAL REGISTER will deprive the petitioner of the competitive advantage from "lead" time that he might have over other manufacturers. It was argued that this lead time could be very significant because the final order approving a color or food additive petition is generally not issued until several years after the petition is filed.

The Commissioner concludes that the notice of filing of the color or food additive petition itself destroys any competitive advantage from lead time that the petitioner might have over other manufacturers. The Commissioner rejects the suggestion in this comment for the additional reasons stated in paragraph 235 of the preamble to the December 24, 1974 final regulation.

76. Comments contended that safety and functionality data and information contained in color and food additive petitions that are not promptly filed due to deficiencies should not be made available for public disclosure after the review of the submission by FDA is complete and the petitioner informed of the deficiencies as provided in §§ 8.9(a) and 121.51(h)(1) (21 CFR 8.9(a) and 121.51(h)(1)). It was argued that the public interest is not served by disclosure at that time. The result, it was asserted, is solely disclosure to competitors of the interest of the petitioner in the color or food additive at a time when the status of the substance is not formally before FDA for consideration. It was suggested that safety and functionality data and information in a deficient petition that is not filed should not be made available for public disclosure if the petitioner indicates that he intends, within a reasonable period of time, to endeavor to correct the deficiencies.

The Commissioner concludes, as stated in paragraph 235 of the preamble to the December 24, 1974 regulation, that such records are properly disclosed after initial agency review. Such records provide no competitive advantage at that time and thus are not exempt from disclosure.

77. A few comments asserted that it was improper to make safety and functionality data contained in color and food additive petitions available to the public at the time the notice of the filing of a petition appears in the FEDERAL REGISTER. The preamble to the December 24, 1974 final regulation had noted that such data and information are frequently published in scientific journals and are not customarily regarded as privileged. The proper test, the comment argued, is whether the data and information in a particular petition have in fact been published in scientific journals and whether the petitioner regards and treats the data and information as privileged.

The Commissioner advises that a similar comment was fully discussed in paragraph 89 of the preamble to the December 24, 1974 final regulation. The Commissioner noted there that, if the test proposed in this comment were adopted, "decisions under the Freedom of Information Act would be highly inconsistent and would require the Food and Drug Administration to conduct an ad hoc inquiry into the way that each manufacturer handles documents submitted to the agency. Such an approach is neither practicable nor contemplated by the law."

78. Comments objected to the availability to the public of safety and effectiveness data contained in an antibiotic drug file when an approval letter is sent to the sponsoring manufacturer by FDA. The comments contended that such full disclosure permits the "latecomer" to benefit from the skills and diligence of an innovator who may have expended considerable research and development funds in obtaining the data and information. Disclosure of the safety and effectiveness data, it was said, would discourage research by denying to the innovator the full benefits to his skills and diligence and would enable competitors to obtain marketing approval in foreign markets in direct competition with the innovator at an earlier point than would be possible were the data and information not revealed until a monograph was published.

The Commissioner does not agree with these comments. In the past, monographs have sometimes not been published in the FEDERAL REGISTER for 2 or 3 years after an approval letter was sent. The holder of the approval letter has been permitted to market the antibiotic during that period on a "release" status, pending publication of the monograph, at which time other manufacturers would have access to the data necessary to manufacture the antibiotic. The Commissioner notes that permitting marketing during this release period has had the effect of providing a competitive advantage through an exclusive license to the holder of the approval letter when no such licensure is contemplated by the statutory scheme.

The creation of this advantage, by permitting marketing during release status, is attributable solely to delays in promulgating monographs and the desire of FDA to make the antibiotics involved available to the public as soon as possible. Steps will be taken by FDA to develop procedures that will resolve this problem by assuring the publication of the monograph on a date substantially contemporaneous with the sending of the approval letter. Accordingly, the Commissioner concludes that the FOIA requires that the safety and effectiveness data and information be available upon the sending of an approval letter.

SAFETY AND EFFECTIVENESS DATA FOR NEW DRUGS OR NEW ANIMAL DRUGS

79. One comment asserted that FDA has not previously treated safety and effectiveness data for new drugs derived from studies performed on animal and human subjects under an investigational new drug notice (IND) or NDA as trade secret material and should not now, for FOIA purposes, begin to do so.

The Commissioner advises that this comment is not an accurate statement of the policies followed in the past by FDA. On the contrary, FDA has since 1938 interpreted section 301(j) of the act (21 U.S.C. 331(j)) as encompassing those data. This longstanding agency policy was fully discussed in paragraph 255 of the preamble to the December 24, 1974 final regulation.

80. Questions have arisen regarding the status of confidential data or information submitted to FDA before the filing of an IND by the potential sponsor in connection with an informal conference between representatives of the sponsor and FDA. It was suggested that such pre-IND submissions be incorporated into the IND, if later filed, and treated accordingly or, alternatively, that they be treated as voluntary submissions covered by § 4.111 and subject to presubmission review in accordance with § 4.44.

The Commissioner advises that data and information submitted to FDA before the filing of an IND by the sponsor are considered a part of the IND file if the IND is subsequently submitted, and they will be treated in the same manner as other data contained in the IND file.

81. Questions have arisen about whether data and information on investigational indications or dosage forms for an approved new drug are available for disclosure if such indications and dosage forms are being actively investigated under an IND.

The Commissioner advises that data and information about dosage forms and indications investigated under an IND or NDA will not be disclosed unless the ongoing testing is already publicly known, notwithstanding the fact that an approved NDA exists for different dosage forms and/or indications involving the same drug product.

82. Questions have arisen about whether data and information in an NDA file relating to an abandoned product or ingredient respecting manufacturing methods or processes, production, sales, distribution and similar data or information, and quantitative or semiquantitative formulas are exempt from disclosure under § 314.14(g) (21 CFR 314.14(g)) unless it is determined that such data and information no longer represent trade secret or confidential commercial or financial information, or whether such data and information are available to the public upon the abandonment of the product or ingredient. It was suggested that such data and information not be made available to the public unless a determination is made that they no longer represent trade secret or confidential commercial information as defined in § 4.61 (21 CFR 4.61).

The Commissioner advises that the data and information are available if the product or ingredient is finally abandoned unless the abandoned product or ingredient directly affects another product or ingredient. Data and information of the sort referred to by the comment are not by definition trade secret or confidential commercial or financial information if contained in an abandoned NDA file, except when the information directly affects another product or ingredient.

83. One comment supported the release, as a part of the summary of safety and effectiveness data and information, of the medical officer's reports and requested that the regulations state that such reports will continue to be released after July 1, 1975. The comment also requested that the summaries now prepared by Bureau of Drugs personnel for internal review be included in the summaries of safety and effectiveness data and information made available to the public.

The Commissioner advises that the medical officer's report and any summaries prepared by Bureau of Drugs personnel are available as part of the summaries of safety and effectiveness data and information only for drugs approved before July 1, 1975. For drugs approved after that date summaries of safety and effectiveness data and information are specially prepared in accordance with § 314.14. Thereafter, disclosure of the medical officer's report or other internal agency records will be denied based upon the FOIA exemption for intra-agency memoranda.

84. One comment contended that withdrawal of an NDA or abandonment of a product ingredient as a result of adverse findings by an over-the-counter (OTC) drug review panel should constitute per se an "extraordinary circumstance" that warrants exemption from disclosure of material concerning the NDA or ingredient.

The Commissioner advises that the regulations do not include a definition of "extraordinary circumstance," and that the term embraces those rare and essentially unforeseeable situations that justify the nondisclosure of material that would otherwise be available to the public. The determination of an extraordinary circumstance must, of necessity, be made on a case-by-case basis.

The Commissioner is not aware of any justification for treating data and information in an NDA file or data and information related to a product ingredient that has been withdrawn or abandoned because of adverse findings by an OTC drug review panel differently from data and information in withdrawn NDA files or data and information related to product ingredients withdrawn or abandoned for other reasons.

85. Questions have arisen concerning the status of the contents of a master file which, pursuant to permission given by the basic manufacturer, is referenced by an investigator working under an independent IND, when the investigator subsequently abandons the IND.

The Commissioner advises that the referenced master file would not be disclosable to the public upon the termination of the independent IND. The data and information in the abandoned or terminated IND file, however, would be available for public disclosure in accordance with § 314.14(f), unless that IND directly affects another IND or NDA.

86. One comment asked which portions of § 314.14 of the final regulations apply to IND files and which portions apply to NDA files.

The Commissioner advises that the provisions of § 314.14 apply in their entirety to IND files, subject to the following limitations: (1) If the existence of an IND has not been publicly disclosed or acknowledged, no data or information in the file will be disclosed by FDA. (2) If an IND file's existence has been publicly disclosed or acknowledged, FDA will, upon request, confirm the existence of the IND. The Commissioner, in this circumstance, may, in his discretion, release a summary of selected portions of the safety and effectiveness data contained in the IND file, e.g., for discussion by an advisory committee. (3) Upon the filing or approval of an NDA, although the IND is technically terminated or discontinued, the material in the IND has the same status as the material in the NDA and is subject to disclosure in accordance with the provisions of § 314.14. (4) If an IND is finally terminated or abandoned, however, as a result, for example, of adverse animal findings, all safety and effectiveness data and information are available for public disclosure in accordance with § 314.14(f). (5) If the termination is temporary and the sponsor of the IND is working to reactivate the file, the safety and effectiveness data retain their confidential status.

87. A number of comments asked what information regarding an IND or pending NDA will be released by FDA when the existence of the IND or pending NDA has been publicly disclosed or acknowledged, whether by disclosure to a member of the public, discussion with outsiders, marketing of the drug abroad, or appearance of published literature on the drug.

The Commissioner reemphasizes that FDA will, upon request, disclose information concerning the IND or pending NDA only to the extent that such infor-

mation has been previously disclosed. In other words, once the existence of an IND or pending NDA has been disclosed or acknowledged, FDA will no longer pretend that the IND or NDA does not exist. In confirming the existence of the IND or NDA the agency will not release any data or information in the files if the data or information itself has not been previously disclosed or acknowledged, unless the Commissioner, in his discretion, decides to release a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, e.g., at an open session of an advisory committee or pursuant to an exchange of important regulatory information with a foreign government. Prior disclosure of otherwise exempt data and information triggers the release by FDA of only that information already released.

88. A question was raised about whether the existence of a supplemental NDA is considered confidential if the existence of the file has not been publicly disclosed or acknowledged.

The Commissioner advises that a supplemental NDA for a new use will be treated in the same manner as an IND or NDA, that is, its existence will not be disclosed by FDA unless the existence of the application has previously been publicly disclosed or acknowledged. A supplemental NDA that is technical, e.g., one filed to reflect a reformulation to remove an ingredient such as FD&C Red No. 2, is not confidential.

89. One comment noted that the list of available computer printouts in § 4.117 (21 CFR 4.117) does not include printouts of investigational new animal drug (INAD) and new animal drug application (NADA) data and information. It was suggested that the availability of such information be specifically noted in § 4.117.

The Commissioner advises that the data and information respecting NADA's have been and will continue to be published in the FEDERAL REGISTER. Thus, there is no reason to make computer printouts available. There is no computer program currently in existence that would permit the retrieval of the INAD data and information.

90. Comments contended that studies and tests on drugs for identity, stability, purity, potency and bioavailability are an integral part of quality control procedures and are not a part of safety and effectiveness data. It was suggested that § 314.14(i) be revised to exempt such studies and tests from public disclosure.

The Commissioner concludes that although the studies and tests referred to may be considered by a pharmaceutical company conducting them as part of its quality control procedures, the results of those tests have a direct bearing on the safety and effectiveness of the drug product involved, e.g., a subpotent, impure, or unstable drug may be unsafe or less effective than anticipated relative to an identical drug product that is potent, pure, and stable. Such tests are accordingly properly classified, for purposes of these public information regulations, as safety and effectiveness data and information. Summaries are therefore available to the public.

91. A large number of comments duplicated previous objections to the disclosure of safety and effectiveness data and information contained in IND or NDA files. These comments were fully discussed and disposed of in the premable to the December 24, 1974 final regulations. These include comments about the situation in which the termination of one IND or NDA and disclosure of data and information relating to it may affect another IND or NDA that has not been terminated—discussed in paragraph 260 of that premable; the adverse effect of the release of safety and effectiveness data on competition in foreign markets—discussed in paragraphs 245 and 269 of that preamble; the Commissioner's conclusion that safety and effectiveness data in abandoned, unapprovable, or withdrawn NDA's, or those for which a determination has been made that the drug product is not a new drug or that the drug may be marketed without submission of safety and/or effectiveness data and information, will be available for public disclosure—discussed in paragraphs 267 through 272 of that preamble; the determination that the existence of an IND notice will not be regarded as confidential if the drug is marketed abroad or if published literature exists on the drug—discussed in paragraph 240 of that preamble; and the contention that the manufacturer should have the final say on the contents of all summaries of safety and effectiveness data—discussed in paragraph 260 of that preamble.

92. In the FEDERAL REGISTER of March 4, 1976 (41 FR 9317), the Commissioner amended § 314.14(f) to correct an inadvertent omission. Before the amendment, paragraph 269 of the preamble to the December 24, 1974 final regulation contemplated, but § 314.14(f) did not expressly provide for, nondisclosure of safety and effectiveness data and information in abandoned, terminated, or withdrawn IND's or NDA's if extraordinary circumstances were shown. The "extraordinary circumstances" language was also inadvertently omitted from § 514.11(f) (21 CFR 514.11(f)), the new animal drug counterpart to § 314.14(f), and was not added by the March 4, 1976 amendment. Accordingly, § 514.11(f) is amended to correct the inadvertent omission.

A PROTOCOL FOR A TEST OR STUDY

93. Several comments asserted that protocols for tests or studies reflect years of experience in a particular field, offer a competitive advantage, are customarily held in confidence by members of the industry, and should therefore be treated as trade secrets.

The Commissioner concludes that, as a general rule, protocols for tests or studies are not properly regarded as trade secrets. However, protocols for tests or studies may be regarded as trade secrets if the facts in a specific case warrant such a conclusion. Without attempting to list all the relevant factors, the Commissioner notes that those factors include the cost involved in developing the protocol, the extent to which the protocol is unique, as well as other criteria contained in the "Restatement Comment" definition of trade secret and discussed in paragraph 81 of the preamble to the December 24, 1974 final regulation.

ADVERSE REACTION REPORTS

94. One comment agreed that reports of adverse reactions in an IND file should be provided on request to individuals participating in a study involving an IND, as provided in § 312.5(c) (21 CFR 312.5(c)). It was contended, however, that adverse reaction reports on IND's should also be available to clinical investigators, physicians, and other health professionals. It was argued that these individuals need such reports to evaluate properly research projects involving particular drug products and in caring for patients. It was also asserted that release of adverse reaction reports on IND's would encourage manufacturers to be honest in informing investigators when investigations are terminated because of adverse results instead of the alleged current practice of attributing such termination to "commercial" reasons.

The Commissioner notes that, pursuant to § 312.1(a)(6) (21 CFR 312.1(a)(6)), the regulations governing investigational new drugs, the sponsor of the drug is required to report promptly to all investigators "any findings associated with use of the drug that may suggest significant hazards, contraindications, side-effects and precautions pertinent to the safety of the drug." Accordingly, the Commissioner concludes that it is not necessary, and would be superfluous to make such reports available to investigators under the FOIA. Any information that the agency receives is required also to be in the possession of all investigators.

PRODUCT INGREDIENTS

95. Questions have arisen about the status under these regulations of certain product formulation information for packaging materials for use with various products, including drugs. Two specific questions have been raised: (1) Will quantitative or semiquantitative formulas for drug-packaging materials submitted to FDA as part of a master file for use with one or more NDA's be available to the public; and (2) will qualitative formulas, i.e., the names of the chemical components of drug-packaging materials, submitted to FDA as part of a master file for use with one or more NDA's be available to the public.

The Commissioner concludes that quantitative and semiquantitative formulas for drug-packaging materials qualify as trade secrets under § 4.61 and thus are exempt from disclosure. Likewise, qualitative formulas for drug-packaging materials are exempt from disclosure under § 4.61.

ASSAY METHOD OR OTHER ANALYTICAL METHOD

96. One comment stated that the regulations are not clear about when an assay or analytical method serves no regulatory or compliance purpose. It was suggested that § 314.14(e)(6) be revised to provide that assay or analytical methods would be available after an approval letter is sent unless the method constitutes a trade secret as defined in § 4.61.

The Commissioner advises that assay or analytical methods, by their nature, are ordinarily devised and disseminated specifically for regulatory or compliance purposes. As was stated in paragraph 288 of the preamble to the December 24, 1974 final regulation, assay and analytical methods are available to and used by a large number of persons, including regulatory officials on the Federal, State, and local level to ensure compliance with the law. They do not provide a competitive advantage for one manufacturer over another. Accordingly, they will be disclosed as a matter of course, with the narrow and rare exception that an assay or analytical method that is not used for any regulatory function whatsoever, that is, one that is not used by anyone to ensure compliance with the law, will be exempt from disclosure unless the method has been previously made available to any member of the public within the meaning of § 4.81.

MANUFACTURING METHODS OR PROCESSES INCLUDING QUALITY CONTROL PROCEDURES

97. Clarification has been requested of the Commissioner's statement in paragraph 290 of the preamble to the December 24, 1974, final regulation that "a company's manufacturing methods and processes, quality control procedures, and quantitative formulas are per se exempt from disclosure unless previously disclosed or later abandoned * * *."

The Commissioner advises that the phrase "per se exempt" was used to indicate that manufacturers need not, as had been proposed, routinely submit a statement to FDA concerning prior disclosure or abandonment of manufacturing methods and processes, quality control procedures, and quantitative formulas. However, information is not automatically exempt from disclosure merely because it is denominated by the manufacturer as, for example, a quality control procedure. Furthermore, manufacturing methods and processes and quality control procedures in particular are available to the public where, for example, the method, process or procedure is described in the literature. It is not unusual to find a detailed description of a manufacturing method in a standard reference book. In such a situation, a claim of confidentiality for the information is unsupported.

BIOLOGICAL DRUGS

98. A few comments contended that safety and effectiveness data and information for biologics should be accorded the same status as similar data and information for new drugs under § 314.14.

The Commissioner concludes that this comment has been fully discussed and disposed of in paragraph 302 of the preamble to the December 24, 1974 final regulation. The comments presented no new information and raised no new issues warranting further discussion.

RADIATION CONTROL FOR SAFETY AND HEALTH ACT OF 1968

99. The Food and Drug Administration, through its Bureau of Radiological Health, enforces the Radiation Control for Safety and Health Act of 1968. Under that act, and implementing regulations, manufacturers are required to submit several different types of reports to FDA, e.g., initial and annual reports under §§ 1002.10 and 1002.11 (21 CFR 1002.10 and 1002.11).

The Commissioner advises that the reports and records maintained by the Bureau of Radiological Health are under review to determine their status generally under the FOIA. Upon completion of that review, a notice of proposed rule making will be published in the FEDERAL REGISTER setting forth proposed amendments to these regulations to state, as has already been done for most other agency records, the status of the records under the FOIA.

MEDICAL DEVICES AND DIAGNOSTIC PRODUCTS

100. The Medical Device Amendments of 1976 (Pub. L. 94-295) amending the Federal Food, Drug, and Cosmetic Act provide substantial new authority to FDA to regulate medical devices and diagnostic products. The Food and Drug Administration will be receiving many new types of reports and information about those products as a result of the amendments. These reports and records will be reviewed to determine their status under the FOIA. Upon completion of that review, a notice of proposed rule making will be published in the FEDERAL REGISTER setting forth proposed amendments to these regulations to state the status of the records under the FOIA.

This final order was proposed prior to Executive Order 11821, requiring agencies in the executive branch to review regulatory and legislative proposals they initiate for inflation impact, and so does not require inflation impact review.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 et seq. as amended; (21 U.S.C. 321 et seq.)), the Public Health Service Act, (sec. 1 et seq., 58 Stat. 682 et seq., as amended (42 U.S.C. 201 et seq.)), and the Freedom of Information Act (Pub. L. 90-23, 81 Stat. 54-56 as amended by 88 Stat. 1561-1565 (5 U.S.C. 552)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 4—PUBLIC INFORMATION

1. In § 4.40 by revising paragraphs (a) and (c) to read as follows:

§ 4.40 **Filing a request for records.**

(a) All requests for Food and Drug Administration records shall be filed in writing by mailing the request or delivering it to the Public Records and Documents Center (HFC-18), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, Maryland 20857. Requests should state in a prominent place on the envelope containing the request, if any, and on the request itself, "FOI request."

* * * * *

(c) Upon receipt of a request for records, the Public Records and Documents Center shall enter it in a public log. The log shall state the date received, the name of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 4.41(b) and the date(s) any records are subsequently furnished.

* * * * *

2. In § 4.42 by revising paragraphs (a)(4) and (5) to read as follows:

§ 4.42 **Fees.**

(a) * * *

(4) *Clerical searches.* $3.00 for each hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(5) *Nonclerical searches.* $3.00 for each hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

* * * * *

3. In § 4.47 by revising paragraph (d) to read as follows:

§ 4.47 **Denial of request for records.**

* * * * *

(d) Minor deletions of nondisclosable data and information from disclosable records shall not be deemed to be a denial of a request for records.

4. By revising § 4.53 to read as follows:

§ 4.53 **Indexing trade secrets and confidential commercial or financial information.**

Whenever the Food and Drug Administration denies a request for a record or portion thereof on the grounds that the record or portion thereof is exempt from public disclosure as trade secret or confidential commercial or financial data and information under § 4.61, and the person requesting the record subsequently contests the denial in the courts, the Food and Drug Administration will so inform the person affected, i.e., the person who submitted the record, and will require that such person intervene to defend the exempt status of the record. If a court requires the Food and Drug Administration to itemize and index such records, the Food and Drug Administration will so inform the person affected and will require that such person under-

take the itemization and indexing of the records. The failure of the affected person to intervene to defend the exempt status of the records and to itemize and index the disputed records will constitute a waiver by such person of such exemption, and the Food and Drug Administration will promptly make them available for public disclosure.

5. By revising § 4.86 to read as follows:

§ 4.86 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Food and Drug Administration administrative proceedings pursuant to Part 2 of this chapter or court proceedings, where the data or information are relevant. The Food and Drug Administration will take appropriate measures, or request that appropriate measures be taken, to reduce disclosure to the minimum necessary under the circumstances.

6. In § 4.100 by revising paragraph (c) (6), to correct the cross-reference to read as follows:

§ 4.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(6) Information on thermal processing of low-acid foods packaged in hermetically sealed containers, in § 90.20(1) of this chapter.

7. In § 4.109 by redesignating the existing text as § 4.109(a) and adding a new paragraph (b); as revised, § 4.109 reads as follows:

§ 4.109 Data and information obtained by contract.

(a) All data and information obtained by the Food and Drug Administration by contract, including all progress reports pursuant to a contract, are available for public disclosure when accepted by the responsible agency official except to the extent that they remain subject to an exemption established in Subpart D of this part, e.g., they relate to law enforcement matters as provided in § 4.88(b).

(b) Upon the awarding of a contract by the Food and Drug Administration, the technical proposal submitted by the successful offeror will be available for public disclosure. All cost proposals and the technical proposals of unsuccessful offerors submitted in response to a request for proposals are exempt from disclosure as confidential commercial or financial information pursuant to § 4.61.

8. In § 4.111 by revising paragraph (c) (3) (vi) to read as follows:

§ 4.111 Data and information submitted voluntarily to the Food and Drug Administration.

* * * * *

(c) * * *

(3) * * *

(vi) If a person requests a copy of any such record relating to a specific individual or a specific incident, such request will be denied unless accompanied by the written consent to such disclosure of the person who submitted the report to the Food and Drug Administration and the individual who is the subject of the report. The record will be disclosed to the individual who is the subject of the report upon request.

* * * * *

PART 314—NEW DRUG APPLICATIONS

9. In § 314.14 by revising paragraph (a), to correct the reference, to read as follows:

§ 314.14 Confidentiality of data and information in a new drug application (NDA) file.

(a) For purposes of this section the "NDA file" includes all data and information submitted with or incorporated by reference in the NDA, IND's incorporated into the NDA, supplemental NDA's; reports under §§ 310.300 and 310.301 of this chapter, master files, and other related submissions. The availability for public disclosure of any record in the NDA file shall be handled in accordance with the provisions of this section.

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

10. In § 514.11 by revising the introductory text of paragraph (f) to read as follows:

§ 514.11 Confidentiality of data and information in a new animal drug application file.

* * * * *

(f) All safety and effectiveness data and information not previously disclosed to the public are available for public disclosure at the time any one of the following events occurs unless extraordinary circumstances are known:

* * * * *

Effective date: This regulation shall be effective February 14, 1977.

(Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 et seq., as amended (42 U.S.C. 201 et seq.); Pub L 90-23, 81 State. 54-56, as amended by 88 Stat. 1561-1565 (5 U.S.C. 552).)

Dated: January 7, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-1180 Filed 1-13-77;8:45 am]

federal register

FRIDAY, JANUARY 14, 1977

PART IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

LOANS FOR COLLEGE HOUSING

Program for Fiscal Year 1977

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 279]

[Docket No. R-77-423]

LOANS FOR COLLEGE HOUSING

Program For Fiscal Year 1977

The Department is considering amending Title 24, Part 279—College Housing by adding a new Subpart B. This amendment is proposed in connection with the reactivation of the College Housing Program for Fiscal Year 1977.

The amendment would set forth the substantive provisions and procedural requirements for direct Federal loans for the rehabilitation, alteration, construction or acquisition of dormitories by eligible applicants under Title IV of the Housing Act of 1950, as amended, 12 U.S.C. 1749 et seq., and would apply only to application submitted during Fiscal Year 1977.

In previous years, loans and debt service grants were made for the acquisition, improvement and construction of central dining facilities, student centers and infirmaries. The proposed amendment would exclude such facilities from the definition of eligible projects with respect to applications submitted during Fiscal Year 1977. In addition, no new applications for debt service grants will be accepted, since all unused grant contract authority was rescinded by Public Law 93-529, enacted December 21, 1974.

The current regulations contained in Part 279 Sections 279.1 through 279.8 will be redesignated at Part 279, Subpart A and will continue to apply to all applications submitted prior to October 1, 1976.

Interested persons may participate in this proposed rulemaking by submitting such written data, suggestions, or arguments as they may desire. All such materials should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. All comments received on or before February 14, 1977, will be considered before adoption of a final rule in this matter. Copies of all comments received will be available for public inspection at the above address during regular business hours both before and after the close of the comment period.

The Department has determined that this proposed rule will not have a significant impact upon the quality of the environment. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of the Finding of Inapplicability is available for public inspection, during regular business hours, in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C.

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

Accordingly, it is proposed to amend Title 24, Part 279—College Housing by inserting a centered heading "Subpart A—College Housing Program—Pre-October 1976" immediately after the centered heading Part 279—College Housing and by adding a new Subpart B reading:

Subpart B—College Housing Program for Fiscal Year 1977

Sec.

AUTHORITY: Sec. 402, Housing Act of 1950, 12 U.S.C. 1749a; Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

Subpart B—College Housing Program for Fiscal Year 1977

§ 279.10 General policy.

The purpose of this program is to assist educational institutions in providing housing for students and faculty members at the lowest possible charge by means of direct loans for the rehabilitation, alteration, erection or purchase of dormitories. Loans under the College Housing Program may be made in accordance with these regulations only to the extent that applicants are unable to obtain the necessary financing elsewhere on equally favorable terms and conditions.

§ 279.11 Definitions.

As used in this Part:

(a) "Act" means Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.).

(b) "Construction" means erection of new dormitories or the rehabilitation or alteration of existing dormitories.

(c) "Current severe housing shortage" means an existing shortage in the supply of decent, safe and sanitary housing available for currently enrolled students at reasonable rents within the commuting area of the educational institution, which shortage must at least equal accommodations for the greater of 50 students or 2 percent of the institution's full-time enrollment.

(d) "Development cost" means the cost of land and site improvements, architectural and engineering services, construction, legal and administrative services, interest during construction, and the cost of acquiring existing dormitory facilities, all as determined by the Secretary. The cost of all furnishings such as beds, dressers, chests, desks, tables and chairs is not included in the definition of development cost, regardless of whether such furnishings are built in or movable.

(e) "Dormitory" means a structure or a portion of a structure which consists of living accommodations for students and faculty members but does not contain either central kitchen or dining facilities.

(f) "Educational institution" means: (1) Any public or nonprofit private college, university, or other institution which offers, or will offer within a reasonable time after completion of the dormitory project, at least a 2-year program acceptable for full credit toward a bachelor's degree; (2) any public or nonprofit private hospital operating a school of nursing beyond the level of high school approved by State authority, or operating an internship program approved by recognized authority; (3) any public educational institution which is administered by an accredited college or university and offers technical or vocational instruction; and (4) any nonprofit corporation, or public body, eligible under Section 404(b) of the Act, and established for the purpose of providing or financing dormitories for students and faculty members at educational institutions defined in (f) (1), (2) and (3) of this section; provided that in the case of a nonprofit corporation other than the educational institution, either the corporation must have been established by the educational institution, or the payment of principal and interest on any loan to such a separate nonprofit corporation must be guaranteed by the educational institution which the project is intended to serve.

(g) "Field Office" means any HUD Area or Regional Office which is delegated authority to process and approve applications under the College Housing Program.

(h) "Secretary" means the Secretary of Housing and Urban Development or other official authorized to perform the functions of the Secretary.

(i) "State" means the several States, the District of Columbia, and the Territories and possessions of the United States, including the Commonwealth of Puerto Rico.

§ 279.12 Eligible projects.

Loans may be provided for the rehabilitation or alteration of existing dormitories which will result in greater economy in the use of fuel or will otherwise result in a reduction in operating costs, and for the construction or acquisition of dormitories by educational institutions which have a current severe housing shortage, under the following conditions:

(a) Construction must not be of elaborate or extravagant design or materials and must be undertaken in an economical manner.

(b) Construction must not have been completed at the time the application for assistance is made.

(c) A loan cannot be made solely for the purpose of refunding a long-term loan obtained prior to the filing of an application.

(d) Site acquisition is limited to the amount of land reasonably necessary for the proposed dormitory.

(e) Parking facilities are not eligible.

(f) Projects to provide facilities for religious purposes or for theological seminaries or other schools providing training primarily for religious vocations are not eligible for assistance.

§ 279.13 Applications for reservations of funds.

(a) Information and application forms may be obtained from and applications submitted to the Field Office of the Department of Housing and Urban Development which serves the area in which the educational institution is located. Applications will be accepted until August 15, 1977.

(b) Applications for assistance will consist of two parts:

(1) Part one must be submitted to receive consideration for a fund reservation and must include the following information:

(i) Name, type and accreditation of educational institution;

(ii) Description and estimated cost of proposed project;

(iii) With respect to applications proposing the rehabilitation or alteration of existing facilities, an estimate of the annual savings in operating costs which will result from the proposed rehabilitation or alterations;

(iv) Evidence of need for proposed project;

(v) Engineering data and/or appraisals on which estimated project costs and operating cost savings, if any, are based;

(vi) Preliminary plans and specifications; and

(vii) Proposed method of financing.

(2) Part two must be submitted to receive consideration for loan approval and must include the information specified in § 279.17.

(c) Each Field Office will review the applications submitted to it and will request HUD Headquarters to reserve funds for those applications which it selects in accordance with the criteria specified in these regulations.

(d) Applications for reservations of funds shall be submitted to and reviewed by HUD Field Offices. Applications will not be reviewed by HUD Headquarters.

(e) Due to the limited amount of funds available and the uncertainty as to which areas will generate the greatest demand for funds, no predetermined allocations of funds to the Field Offices will be made. Funds will only be reserved for specific projects by HUD Headquarters on the basis of Field Office recommendations, subject to the availability of funds.

(f) Subject to the availability of funds, fund reservations will be made promptly for eligible applications which meet the priority criteria specified in § 279.15(a)(1), when HUD Headquarters receives the Field Office recommendations.

(g) The priority criteria specified in § 279.15(a) (2) and (3), will be used for establishing priorities by all Field Offices. Therefore, the ranking numbers assigned to individual applications in accordance with § 279.15(a) (2) and (3) will permit a comparison by HUD Headquarters between applications in those categories which are recommended for funding by different Field Offices.

(h) In the event that HUD Headquarters receives more recommendations for fund reservations than can be funded, HUD Headquarters will prepare a nationwide priority list for each of the categories specified in § 279.15(a) (2) and (3) by using the priority numbers assigned by the Field Offices on the basis of the ranking criteria specified in said section. Fund reservations will then be made by HUD Headquarters on the basis of the nationwide lists.

(i) Field Office recommendations and rankings for the priority category specified in § 279.15(a) (2) will be due in HUD Headquarters on June 1 and September 1, 1977. HUD Headquarters will reserve funds, subject to availability, no later than June 30 and September 30, 1977.

(j) Recommendations and rankings for the priority category specified in § 279.15(a) (3) will be due in HUD Headquarters on September 1, 1977. HUD Headquarters will reserve funds, subject to availability, no later than September 30, 1977.

(k) HUD Headquarters will promptly advise all Field Offices when funds are no longer available. Field Offices will then notify all educational institutions which submitted applications but did not receive reservations of funds.

§ 2279.14 Limitations on loan amount.

(a) The maximum loan which any educational institution may request is the lesser of $7,500,000, or $2,500 per full-time student, or $12,200 per student and/or faculty member to be housed in the proposed dormitory. The number of full-time students stated in the application must be the same as reported to the U.S. Office of Education for the Fall Semester 1976.

(b) The minimum loan which may be requested is $25,000.

(c) In order to exclude projects which are uneconomical or exceed reasonable design standards, applications proposing a Development Cost (exclusive of land or extraordinary project costs as determined by the Secretary) in excess of $14,000 per student and/or faculty member to be housed in the proposed dormitory are not eligible.

(d) The limitations specified in (a), (b) and (c) of this section will be adjusted to reflect local construction costs on the basis of a nationwide cost index of local construction costs to be furnished by HUD Headquarters.

§ 279.15 Priority criteria.

(a) In recommending and making reservations of funds, the following order of priorities will be observed by HUD Field Offices and HUD Headquarters.

(1) Dormitory projects for which the construction contract was executed on or before August 9, 1976 (the date of enactment of Pub. L. 94-378), and which have not been permanently financed in whole or in part. Fund reservations may be made by HUD Headquarters for applications in this priority category as soon as the Field Office has completed its review and made its recommendation, subject to the availability of funds.

(2) Rehabilitation or alteration of existing dormitories to improve fuel economy or otherwise reduce operating costs. Applications proposing major structural alterations are not eligible in this category. Applications in this priority category will be retained in the Field Office and recommended for reservations of funds on June 1 and September 1, 1977, subject to the availability of funds. In the event that the amount of assistance requested in this category exceeds the amount available, applications will be recommended for funding in the following order:

(i) Applications proposing the rehabilitation or alteration of dormitories originally financed with assistance under the College Housing Program, which will result in greater economy in the use of fuel or will otherwise result in a reduction in operating costs. Within this subcategory, applications which demonstrate the greatest savings in fuel consumption or other operating costs in relation to the cost of the proposed rehabilitation or alteration will be given priority. This will be determined on the basis of a ranking number equal to the estimated number of months before the savings will equal the cost of the rehabilitation or alterations.

(ii) Applications proposing the rehabilitation or alteration of dormitories not originally financed with assistance under the College Housing Program, which will result in greater economy in the use of fuel or will otherwise result in a reduction in operating costs. Within this subcategory, applications which demonstrate the greatest savings in fuel consumption or other operating costs in relation to the cost of the proposed rehabilitation or alteration will be given priority. This will be determined on the basis of a ranking number equal to the estimated number of months before the savings will equal the cost of the rehabilitation or alterations.

(3) New construction or acquisition of dormitories for institutions which have a current severe housing shortage. No funds will be reserved for applications in this category until funds have been reserved for all eligible applications in the priority categories specified in § 279.15(a) (1) and (2). In the event that the amount of assistance requested exceeds the amount available, priority will be given to applications from institutions having the most severe current shortage of housing for students. The relative severity of the shortage will be determined on the basis of a ranking number equal to the number of accommodations needed to eliminate the shortage multiplied by the percentage of the institution's full-time enrollment not adequately housed.

(b) Applications that do not receive fund reservations by the close of business on September 30, 1977, will be returned to the applicant.

(c) A reservation of funds will not constitute or imply approval of an application.

§ 279.16 Approval of applications for fund reservations.

(a) To be eligible for selection, a request must be received by HUD within the period specified herein and must be complete and responsive to the requirements specified herein. Requests for fund reservations will be approved by the Secretary based on an evaluation procedure that takes into account the information provided pursuant to § 279.13.

(b) Educational institutions whose requests for fund reservations are approved shall be notified by letter, which letter shall:

(1) Specify the amount of the fund reservation;

(2) Inform the educational institution that use of the fund reservation is conditioned on approval by the Field Office of a loan application;

(3) Instruct the educational institution to submit an application for loan approval to the Field Office; and

(4) State that the amount of loan funds reserved or any portion thereof unused by the educational institution may not be transferred by the educational institution.

(c) Educational institutions whose requests for fund reservations are not approved shall be so notified in writing by the Field Office.

(d) Educational institutions whose requests for fund reservations are approved shall, as soon as possible after receiving such approval, communicate with the Field Office in order to provide the Field Office with sufficient information to enable the Field Office to process an application for loan approval.

(e) The Secretary shall cancel any reservations of loan funds for projects for which the construction or rehabilitation is not commenced or the acquisition completed within the eighteen-month period following issuance of the written notification to the educational institution that funds have been reserved, unless an extension of time, not to exceed six additional months, is requested of and granted by the Secretary.

§ 279.17 Applications for loan approval.

(a) Following approval of a reservation of funds, the educational institution shall submit to the Field Office a request for loan approval on forms prescribed by HUD.

(b) Requests for loan approval shall be accompanied by or include evidence satisfactory to the Field Office Director that:

(1) The educational institution:

(i) Has the necessary legal authority to finance, acquire, construct or rehabilitate the project, to maintain the project, and to apply for and receive the proposed loan;

(ii) Meets any requirements as to corporate organization and has authority to enter into such contract obligation and execute such security instruments as may be required by HUD;

(iii) Has met the HUD requirements (set forth in HUD 1390.1) implementing the National Environmental Policy Act of 1969 (83 Stat. 852);

(iv) Has the ability to comply with the terms and conditions governing receipt of assistance and operation of the project;

(v) Has or will have such interest in or title to the project site, including access thereto, as will assure undisturbed use, possession and operation of the facilities during the period of assistance; and

(vi) Will retain title to and all of its right, title, and interest in and to the project during the period of assistance, except as otherwise expressly approved by the Secretary.

(2) The financial condition of the applicant and the proposed security for the loan are adequate to provide a reasonable assurance of repayment of the loan.

(c) The HUD Field Office shall review the loan application and shall notify the educational institution of its approval or disapproval, indicating any deficiencies. The educational institution will be given a reasonable time, as determined by the Field Office, to correct any deficiences. The approval shall set forth fully the terms and conditions upon which the loan will be disbursed.

§ 279.18 Loan terms.

(a) The loan amount shall not exceed the total eligible Development Cost of a project, as determined by the Secretary.

(b) Loans shall be for such periods not to exceed 40 years, bear interest at such rate not to exceed 3 percent per annum, be so secured, and be subject to such terms and conditions, as shall be determined by the Secretary.

(c) Loans will be evidenced by either notes or bonds issued by the educational institution.

(d) The interest rate shall be determined by the Secretary on the basis of the formula prescribed in the Act, as follows:

(1) Section 401(c)(1) of the Act provides that the loans shall bear an interest rate of not more than the lower of:

(i) Three (3) per centum per annum, or

(ii) The total of one-quarter of one (1) per centum per annum added to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury as provided in section 401(e) of the Act.

(2) Section 401(e) of the Act provides that notes or other obligations issued by the Secretary to obtain funds for these loans shall bear interest at a rate determined by the Secretary of the Treasury which shall not be more than the lower of:

(i) Two and three fourths (2¾) per centum per annum, or

(ii) The average annual interest rate on all interest bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Secretary and adjusted to the nearest one-eighth of one per centum.

(e) In the case of loans to private educational institutions, the security normally will be a general obligation secured by a first mortgage on the project and a pledge of project revenues.

(f) In the case of loans to public educational institutions, the security normally will be, in order of preference:

(1) A general obligation secured by a first mortgage on the project and a pledge of project revenues, where legally available;

(2) A special obligation secured by a first mortgage on the project and a pledge of project revenues, where legally available; or

(3) A special obligation secured by a pledge of project revenues.

(g) If the Field Office Director determines that additional security is needed to reasonably assure loan repayment, a pledge of income from endowment funds, securities or other revenue sources, and/or a mortgage on other facilities, may be required as deemed necessary to reasonably assure repayment.

(h) Loans will be amortized by approximately equal periodic payments of combined principal and interest over the life of the loan. Said payments shall be made not less often than annually and not more often than semiannually; provided, however, that the payment of interest only may be required for a reasonable period of time not to exceed one (1) year following the completion of construction.

§ 279.19 Loan agreements.

Upon approval of a direct loan together with reservation of funds, the Field Office will prepare and forward a loan agreement for execution by the educational institution. The agreement will set forth the terms and conditions of the loan and will also specify conditions which must be fulfilled precedent to making of the loan. The fully executed agreement will constitute a contract between the educational institution and the Secretary during the life of the loan.

§ 279.20 Fee for Government field expense.

For each approved loan, the educational institution is required to pay a fixed fee, which in the aggregate will be sufficient to cover the cost of the Government's field expense. The fixed fee shall be an amount equal to one-eighth of one percent (.00125) of the loan amount with a minimum charge of $500 and a maximum charge of $1,500.

(a) The fixed fee shall be computed on the loan amount at the time of the original loan agreement. After execution of the loan agreement, no adjustment shall be made in the specified fixed fee, except when the loan amount is changed by 20 percent or more. In such cases, the fixed fee shall be redetermined by the formula above and specified in the related amendment to the loan agreement.

(b) The fixed fee must be paid to the Government out of the first funds deposited into the Construction Account, regardless of source.

§ 279.21 Construction financing.

The Secretary may advance loan funds to the educational institution during the construction of the project, provided that all prerequisites to loan disbursement as specified in the loan agreement, have been met.

(a) Total HUD advances to the educational institution will normally not exceed 75 percent of the approved loan, and shall be made only in amounts necessary to meet the actual current disbursement needs of the educational institution. Where circumstances warrant, the Field Office may approve additional advances so long as the total does not exceed 90 percent of the approved loan.

(b) Interest on advances will be charged by HUD at the same rate as on the bonds or notes.

(c) If the applicant is participating in the project financing, it must deposit to the Construction Account and substantially expend its own funds prior to obtaining any advances from HUD.

§ 279.22 Loan disbursement procedures.

(a) Advances of loan proceeds shall be made directly by HUD to the depository designated by the educational institution for deposit into the Construction Account.

(b) Advances shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or rehabilitation work completed and in place, minus the appropriate holdback or retainage, as determined by the Field Office.

(c) Loan disbursements, including advances, may only be made upon the receipt by the Field Office of a duly executed note and a mortgage on the project and its site (or other real property satisfactory to the Field Office) whenever a note and mortgage is legally available as evidence of the debt of the educational institution to be created by the loan disbursement; provided, however, that in the event a note and mortgage is not legally available, loan disbursements may only be made upon the receipt by the Field Office of bond anticipation notes or such other evidence of the debt to be created by the loan disbursement as shall be satisfactory to the Field Office. Advances will not be made in the absence of a debt instrument satisfactory to the Field Office.

(d) Requisitions for loan disbursements shall be submitted by the educational institution on forms to be prescribed by the Secretary and shall be accompanied by such additional information as the Field Office may require in order to approve loan disbursements under this part, including, but not limited to, evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building and other governmental requirements, and, where applicable, such evidence of continued priority of the mortgage, if any, as the Secretary may prescribe.

§ 279.23 Determination of final approved development cost.

(a) A certificate of project development cost prepared on forms prescribed by the Secretary and executed by the educational institution may be used at the discretion of the Secretary, in lieu of an audit by the Government, for the purpose of determining the final approved Development Cost.

(b) The educational institution shall submit to the Field Office such documentation as may be prescribed by the Secretary. The documentation hereunder shall include such information and forms as the Secretary may require in order to approve the educational institution's certificate of project development cost, and to determine the final approved development cost, including, but not limited to, a certificate of actual cost, in a form prescribed by the Secretary, showing the actual cost to the educational institution for construction, architectural, legal, organizational, offsite costs and other items of expense approved by the Field Office. The Certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the educational institution. Any such payments shall be deducted from the costs determined to be eligible for inclusion in the total loan amount approved by the Field Office.

§ 279.24 Other requirements.

(a) Construction plans and specifications are subject to review and approval by the Field Office.

(b) Unless otherwise agreed to in writing by the Secretary, all construction work must be undertaken pursuant to contracts approved by the Secretary.

(c) All prime construction contracts must be awarded to the responsible bidder submitting the lowest bid on the basis of open competitive bidding.

(d) All laborers and mechanics employed by contractors and subcontractors in the construction of dormitories assisted under the Act shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act (40 U.S.C. 327–332).

(e) All contracts for construction work paid for in whole from loan funds provided under the Act shall provide that the contractor shall comply with the Copeland ("Anti-Kickback") Act (40 U.S.C. 276c) and the regulations of the Secretary of Labor thereunder (29 CFR Part 3).

(f) The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination are applicable to educational institutions receiving assistance under the Act.

(g) All contracts for construction work paid for in whole or in part from loan funds provided under the Act are subject to Executive Order 11246 (30 FR 12319, Sept. 28, 1965), as amended by Executive Order 11375 (32 FR 14303, Oct. 17, 1967), providing for equal opportunity in employment, and the rules and regulations of the Department of Labor with respect thereto.

(h) The provisions of Title VIII (Fair Housing) of the Civil Rights Act of 1968 (Pub. L. 90–284, 42 U.S.C. 3601–3619), prohibiting refusal to rent to or discrimination against any person in terms or conditions of rental or provision of services on account of race, color, religion, or national origin, are applicable to projects assisted under the Act.

(i) All projects for which loans are made pursuant to this Subpart B are subject to the following requirements:

(1) Equal Opportunity requirements, which include Executive Order 11063 and section 3 of the Housing and Urban Development Act of 1968 and regulations and guidelines pursuant thereto.

(2) HUD requirements implementing the National Environmental Policy Act of 1969 (83 Stat. 852).

(3) Governmental requirements implementing the Clean Air Act (77 Stat. 392, as amended) and the Federal Water Pollution Control Act (66 Stat. 755, as amended).

(4) HUD requirements implementing the Flood Disaster Protection Act of 1973 (87 Stat 975).

(j) Projects for which loans are made to public educational institutions or eligible public bodies pursuant to this Subpart B are also subject to the following requirements:

(1) HUD relocation requirements established pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

(2) Any special requirements for the handicapped pursuant to the standards established by HUD under the Architectural Barriers Act of 1968 (82 Stat. 718).

Issued at Washington, D.C., January 10, 1977.

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

[FR Doc.77-1256 Filed 1-13-77;8:45 am]

federal register

FRIDAY, JANUARY 14, 1977

PART V

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

■

EMPLOYEE RESPONSIBILITIES AND CONDUCT

Conflict of Interest

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

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

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Conflict of Interest; Revision

The purpose of this amendment is to revise the Department of Transportation's regulations governing employee conflict of interest.

The term "conflict of interest" is often misunderstood by Government employees and the general public. Yet, a careful understanding of the term and its full implications is necessary if the public is to have full confidence that their Government is truly working for them at all times.

Conflict of interest is not synonymous with dishonesty. Employees with unquestionable loyalty to the United States and the highest standards of public service may find themselves in situations where the Employees' Responsibility and Conduct Regulations (Part 99) may have a direct bearing on actions they propose to take either in their capacity as a Government employee, or as a private citizen. Thus, each employee is urged to become familiar with the regulations contained in Part 99 so that they may avoid potential conflict of interest and, just as importantly, avoid the appearance of a conflict of interest.

The regulations provide that a copy of Part 99 be given to each employee so that it can be referred to from time-to-time. In this way the general public can be assured that all officers and employees of their Government understand the dangers presented by conflict of interest situations: both the Government and the individual employee can know that they are doing all they can to insure that such conflicts—and the appearance of such conflicts—do not occur.

Every potential or actual conflict of interest is "dangerous" in two respects. First, there is the risk that public confidence in Government decision making and in Government actions will be undermined. Without public support the task of maintaining an orderly and efficient set of public programs is made vastly more difficult, if not at times impossible.

Second, there is the significant risk of disciplinary action or even criminal prosecution of the employee who violates either the spirit or the letter of conflict of interest statutes and regulations. And, as in other situations, ignorance of the law is no excuse.

It is not necessary to detail the potential impact on an employee who is found in violation in order to emphasize the significant stake each employee has in understanding and adhering to the highest standards set forth in the regulations.

It is important to note that Part 99 contains a revised standard and sets forth more clearly the duties and obligations of each employee as well as potential effects of violation.

For example, considerable thought was given to the entire question of so-called "business luncheons" before adopting a standard which reduces the circumstances under which employees may accept such luncheons and, in such instances where permitted, limits the cost to a nominal amount on infrequent occasions. Other areas of concern which have been carefully addressed involve the solicitation of donations, the giving or accepting of gifts, the solicitation of employment with someone outside of Government service, and the relationship of activities of an employee's spouse, if such activities create either an actual or implied conflict of interest.

Of necessity, no set of guidelines or regulations can specify every action to be taken or refrained from, in every possible set of circumstances. The permutations and combinations of factors which can lead to a potential conflict of interest are infinite in number. Yet, the use of simple judgment, common sense, and care can aid an employee and avoid the overwhelming majority of potential problems. The guidance contained in both the spirit and letter of Part 99, together with Departmental directives governing specific substantive matters, should help the employee understand the obligation involved in serving the general public.

Because Part 99 places a duty on the employee to abide by both the spirit and the letter of the regulations, it is the affirmative responsibility of the Department's Ethics Counselor and the Deputy Counselors to be readily available to discuss individual problems and give interpretation and advice to the employees. Counselors may find that there is a violation or potential violation of the regulations even where the conduct in question does not fall squarely within a section of the rules. Clearly, it is the duty of the Counselors to treat each instance individually without making a blanket presumption that all matters of a certain type are improper. This is especially true in areas where the husband-wife, or other family relationship may lead to a presumption that the employment or financial interest of either may influence the proper discharge of duties by the other. Each employee must exercise great care in close family relationships—especially where a husband-wife situation is involved—to avoid either an actual or the appearance of a conflict of interest, the improper disclosure of information not available to the public, or the receipt of ex parte communications which have not been documented for the record.

Because we start with a strong presumption that each spouse has an independent right to career development and fulfillment as an individual and that each may act in his or her professional responsibilities independently and objectively, it is especially important that there be full and frank disclosure of any potential conflicts and that there be agreement between the spouses concerning appropriate issues for discussion.

In all circumstances—whether involving the financial holdings of the employee's spouse, the receipt (from any person) of ex parte communications during the pendency of a rulemaking procedure, or any other potentially troublesome matter—full and frank disclosure of the circumstances surrounding the potential conflict is essential to the prompt and satisfactory resolution of that issue. Therefore, full and open channels of communication between all employees and the Department's Ethics Counselors are of the utmost importance in protecting both the interest of the employee and of the Government.

Conflict of interest situations which do not involve intentional dishonesty or willful misconduct are by their nature matters on which reasonable people may differ. As previously stated, no set of regulations or guidelines can take the place of good, sound judgment. Nor can they be all-inclusive. Therefore, to the extent that Departmental policy can be stated simply and directly, it is this: make full and complete disclosure of all relevant factors on a timely basis.

Finally, responsible, responsive and effective Government depends upon the trust and confidence that the people have in their Government officials. Trust in Government is delicate and fragile. It is easily shattered when violated, and its reconstruction is a painstaking and persistent process. However well-intended and pure the motives of Federal employees may be, it is a fact that a skeptical public often does not accord the traditional presumption of innocence; indeed, the appearance of impropriety, in certain circumstances, can be more damaging to the effectiveness of Government than any wrongdoing. Accordingly, each Government employee has a twofold responsibility: first, to ensure that his or her activities are motivated solely by the public interest; and, secondly, to consider both the appearance of any potential conflict and the effect any action may have ultimately on the confidence that the American people have in their Government. There will be occasions when an employee's decision will involve balancing public interest considerations. Consider, for example, the decision that must be made by the employee who has an opportunity to participate in an activity or event that will increase his or her knowledge, facilitate communication with certain segments of the public and broaden the information base upon which decisions are made. The employee must evaluate carefully whether participation in such an activity possibly may lead the public to conclude—probably erroneously—that favored treatment has been given to a particular person, organization or special interest. In weighing these considerations, the employee must consider the risk to the entire process of decision making and the credibility of the Government as well as the risk to public confidence in the way the particular issue or activity is resolved.

This, then, is the spirit of Part 99, and recognizing that many questions will need to be answered on a case-by-case basis, the regulations contained in part 99 are issued and commended to each

employee of the Department for their counsel.

Since this amendment relates to departmental management, procedures, and practices, notice and public comment thereon are unnecessary and it may be made effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Part 99 of Title 49, Code of Federal Regulations, is revised to read as set forth below.

Effective date: This amendment is effective January 14, 1977.

Issued in Washington, D.C., on January 11, 1977.

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

Subpart A—General

AUTHORITY: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657), and E.O. 11222, 3 CFR, 1965 Comp., unless otherwise noted.

Subpart A—General

§ 99.735–1 Purpose and policy.

(a) This part sets forth standards of ethical and other conduct, and reporting requirements, for employees and special Government employees of the Department of Transportation. It implements Executive Order 11222 (30 FR 6469) and Part 735 of Chapter I of Title 5 of the Code of Federal Regulations (30 FR 12529), as amended (33 FR 12487). The standards and requirements are appropriate to the particular functions and activities of the Department.

(b) Since the efficient operation of the Department requires continued public confidence in its employees, acts which may result in the appearance of a conflict of interest also are governed by this part. The absence of a specific published standard of conduct covering an act which would tend to discredit the Department, and/or an employee or special Government employee of the Department does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

(c) The President has stated the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

Personnel of the Department are expected to adhere to the President's message and to standards of conduct that will reflect credit on the Government.

§ 99.735–3 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Department" means the Department of Transportation, including the Office of the Secretary, nonappropriated fund activities, and the following operating administrations:

(a) The U.S. Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The St. Lawrence Seaway Development Corporation.

(f) The Urban Mass Transportation Administration.

(g) The National Highway Traffic Safety Administration.

(h) The Materials Transportation Bureau.

"Employee" means an officer or employee of the Department and an active duty officer or enlisted member of the Coast Guard, but does not include any special Government employee.

"Includes" means "includes but is not limited to."

"May" is used in a permissive sense to state authority or permission to do the act prescribed.

"Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

"Shall" is used in an imperative sense.

"Special Government employee" is "a Special Government Employee" of the Department as defined in section 202 of Title 18, United States Code, which includes, but is not limited to "* * * an officer or employee of the executive branch of the United States Government, of any independent agency of the United States * * * who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, * * *" "* * * a Reserve officer of the Armed Forces * * * unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training," and "a Reserve officer of the Armed Forces * * * who is serving involuntarily. * * *"

§ 99.735–5 Applicability.

(a) This part applies to the following:

(1) Each Employee of the Department.

(2) Each special Government employee of the Department.

(3) Each civilian employee or member of an armed force who is detailed to the Department.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 99.735–7 General.

(a) Each employee shall avoid any action, whether or not specifically prohibited by this part, which might result in or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside of official channels [or not in accordance with applicable published procedures or statutory requirements; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) Employees shall not engage in criminal, dishonest, infamous, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the Government.

§ 99.735–9 Gifts, entertainment, favors, employment and reimbursement of expenses.

(a) Except as provided in paragraphs (b) through (e) of this section an employee shall not solicit, or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing of monetary value, from a person or employer of a person who:

(1) Has, or is seeking to obtain contractual or other business or financial relationships with the Department;

(2) Conducts operations or activities that are regulated by the Department, or

(3) Has interests which may be substantially affected by the performance or nonperformance of that employee's official duties.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious family relationship rather than the business of the persons concerned is the motivating factor;

(2) Accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting, or on an inspection tour if the employee is properly in attendance and there is not a reasonable opportunity to pay;

(3) Accept a loan from a bank or other financial institution on customary terms to finance proper and usual activities of the employee such as a home mortgage loan; or

(4) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value.

(c) In seeking employment with an organization described in paragraph (a) (1), (2) and (3) of this section, an employee must be aware of the great potential for the appearance of a conflict of interest, and Federal law which prohibits certain kinds of employment. Accordingly, in soliciting employment an employee shall not:

(1) Solicit such employment if acceptance thereof would cause a violation of section 207 or 208 of title 18 of the U.S. Code;

(2) Permit the prospect of employment otherwise permitted by these regulations to influence the performance or nonperformance of his or her duties;

(3) Communicate or use information of particular interest to the prospective employer even if such information is available to the public generally; or

(4) Indicate, directly or indirectly, that he or she would be able to offer information or special relationships with officials of the Department.

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. An employee who violates this paragraph shall be removed from Government service in accordance with 5 U.S.C. 7351. However, this paragraph does not prohibit a voluntary gift of nominal value or the solicitation or making of a voluntary donation in a nominal amount to a gift made on a special occasion such as marriage, illness, resignation, retirement, or transfer.

(e) An employee shall not accept a gift, present, decoration, medal, badge or other emblem from a foreign government or from an agent acting on behalf of a foreign government; however, this section does not prohibit an employee from either (1) accepting and retaining a gift of nominal value given as a souvenir or mark of courtesy, or (2) accepting of a gift of more than nominal value when it appears that to refuse such gift would cause embarrassment, or offense, or adversely affect the foreign relations of the United States, provided that such gift is accepted on behalf of the United States and shall be reported to the Department Counselor in writing and used or disposed of as the property of the United States. This subsection is adopted pursuant to Article I, Section 9 of the United States Constitution and section 7342 of Title 5 of the U.S. Code.

(f) Except as provided in 5 U.S.C. 4411, an employee shall not accept reimbursement from a non-Federal source for expenses incurred in connection with travel or official business.

(g) The Department may accept reimbursement for an employee's expenses incurred in connection with travel on official business except where the acceptance of reimbursement by the employee would constitute a conflict or apparent conflict of interest.

(h) An employee shall not accept reimbursement from any private source for expenses incurred in connection with voluntary travel by the employees on their own time to the extent that such reimbursement exceeds ordinary and reasonable transportation and subsistence costs or otherwise constitutes a conflict or apparent conflict of interest.

§ 99.735–11 Outside employment and other activities.

(a) An employee shall not engage in any outside employment or other outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of the employee's Government employment. Incompatible activities include:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; and

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Although employees are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, Executive Order 11222, Civil Service Commission regulations or this part, an employees shall not engage in such activities under circumstances:

(1) Which might result in a conflict or apparent conflict of interest;

(2) Which depend on information or official data obtained as a result of government employment, except when the information has been made available to the general public, or when an appropriately designated official gives written authorization for use of nonpublic information following a determination that the basis for the use is in the public interest; or

(3) Which tend to impair the employee's mental or physical capacity to perform government duties and responsibilities in an acceptable manner.

(d) Honoraria. (1) A Presidential appointee covered by Section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Department, or which draws substantially on official data or ideas which have not become public information.

(2) Any employee, other than those described in paragraph (d) (1) of this section, may receive compensation or other thing of monetary value for any lecture, discussion, writing or appearance the subject matter of which is devoted to the responsibilities, programs or operations of the Department, or which draws on official data or ideas of the Department, provided that any such employee shall disclose to the General Counsel of the Department within five business days following the event, the source, amount or value and data of receipt of all compensation or other thing of monetary value. All disclosures under this section shall be subject to public inspection and availability.

(e) If an activity permissible under paragraph (c) or (d) of this section is to be undertaken as official duty, expenses will be borne by the Department, and the employee shall not accept compensation or allow his or her expenses to be paid by the person or group under whose auspices the activity is being performed. If it is determined that an activity under paragraph (c) or (d) (2) is to be undertaken in a private capacity, the employee may not use duty hours or Government property including equipment and supplies, for that purpose, but may accept compensation, and may subject to § 99.735–17(b), use his or her offi-

cial title only if it is made clear that he or she does not represent the Department.

(f) [Reserved]

(g) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law (5 U.S.C. 7321–7327).

(2) Participation in the affairs of, or acceptance of an award given or to be given on a regular basis for, a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civil organization; or

(3) Outside employment that is not otherwise prohibited.

§ 99.735–13 Financial interests.

(a) An employee shall not have a direct or indirect financial interest that conflicts or appears to conflict with his Government duties and responsibilities. In any case in which such a question of financial interest arises the procedures set forth in § 99.735–15 shall be followed.

(b) An employee shall not engage in, directly or indirectly, a financial transaction as a result of, or relying primarily on, information obtained through his Government employment if that information has not been made available to the general public.

(c) This section does not preclude an employee from having a financial interests or engaging in financial transactions to the same extent as a private citizen not employed by the Government as long as it is not prohibited by law, Executive Order 11222, or this part.

(d) All employees, whether or not subject to the disclosure requirements of Appendix C, shall promptly report within ten days of such events, all transactions involving real or personal property in which the employee has an interest and in which the Department is a buyer, seller, lessee, lessor or otherwise acquires or divests itself of an interest in such property.

§ 99.735–15 Disqualification arising from private financial interests.

(a) Section 208 of title 18, United States Code, provides criminal penalties for any employee who participates personally and substantially, as a Government employee in certain matters in which, to the employee's knowledge, the employee, the employee's spouse, minor children, or certain other persons, have a financial interest. In administering this section and implementing section 208 of title 18, policies set forth in § 99.735–13 are controlling. For exemptions from section 208, see paragraphs (i) and (j) of this section.

(b) The kinds of participation covered by section 208 include but are not limited to, any decision, approval, disapproval, recommendation, investigation or furnishing of advice, in any proceeding, application, request for ruling or other determination, contract, claim controversy, charge, accusation, or other particular matter. Section 208 of title 18 United States Code applies to these matters when a financial interest therein is possessed by the participating employee, his spouse, minor child, or partner, or by an organization in which the employee is serving as an officer, director, trustee, partner or employee, or by any person or organization with which the employee is negotiating or has arrangements concerning prospective employment.

(c) The words "other particular matter" in the first sentence of paragraph (b) of this section refer to matters in which the employee concerned reasonably may anticipate that participation or advice may have or may appear to have a direct or predictable effect on the financial interest referred to in the second sentence of paragraph (b) of this section. While not restricted to matters involving a specific party or parties, the words "other particular matter" do not, normally include rulemaking, the formulation of general policy or standards, or similar matters of broad scope and general applicability.

(d) Before an employee may participate in a matter to which he or she knows, or should reasonably know, section 208 applies, he or she must either cause the financial interest involved to be divested or request a determination of the propriety of participation in such matter by informing in writing the official for his or her appointment of the nature and circumstances of the matter and the financial interest involved.

(e) After examining the information submitted, the said appointing official shall:

(1) Cause the employee to be relieved from participation in the matter and reassign it to another employee who is not subordinate to the relieved employee; or

(2) Approve the employee's participation upon determining in writing (a copy of which shall be placed in the employee's personnel file) that the interest [or the participation] involved is not so substantial as to be likely to affect the integrity of the services the Government may expect from the employee thereby making section 208 inapplicable to the matter; or

(3) Recommend the reassignment of the employee; or

(4) If none of these alternatives is feasible, direct the employee to cause the financial interest to be divested so that it no longer comes within the scope of this section.

(f) In any case in which a responsible official has reason to believe that an employee may have an interest that would be disqualifying under this section, said responsible official shall discuss the matter with the employee. If it is found that the interest exists, he may take any of the actions stated in paragraph (e) of this section.

(g) A holding in a trust whose terms direct the trustee to manage solely in accord with his own judgment and not to disclose to the beneficiary, in any manner, the specific dealings and holdings (a so-called "blind trust") may be exempted from the prohibitions of this section, when an employee or a member of the employee's household is the beneficiary, upon a finding by the General Counsel of the Department that the employee is in fact unaware or is unable to determine what interests are held in the trust. Thus, a "blind trust" consisting of an interest in only one company or industry will not be exempted if the employee could reasonably be expected to assume that the trustee has not divested the trust of that interest.

(h) Exemptions. Information concerning categories of financial interests which are exempted from the prohibitions of section 208(a) of title 18, United States Code, as being too remote or too inconsequential to affect the integrity of an employee's interest in a matter, are set forth in Appendix A.

§ 99.735–17 Use of Government property or official title.

(a) An employee shall not, directly or indirectly, use or allow the use of Government property of any kind, including property leased to the Government, for other than an officially approved activity. Each employee has a positive duty to protect and conserve Government property, including all equipment, supplies, and other property.

(b) An employee shall not directly or indirectly, use or allow the use of his or her title or position in connection with any commercial enterprise or in endorsing any commercial product or service.

§ 99.735–19 Misuse of information.

Except as provided in § 99.735–11(d) an employee shall not for the purpose of furthering a private interest, directly or indirectly, use or allow the use of official information obtained through or in connection with Government employment, if that information has not been made available to the general public.

§ 99.735–21 Indebtedness.

Each employee shall pay all just financial obligations in a proper and timely manner. For the purposes of this section "just financial obligations" means those imposed by law such as Federal, State, or local taxes or those that are recognized as such by the employee or reduced to a judgment by a court. "In a proper and timely manner" means in a manner which, considering all circumstances, will not reflect adversely on the Government as employer. The Department will not determine the validity or amount of a disputed debt and will not act to collect such debts, except as provided in the Federal Wage Garnishment Law 42 U.S.C. 659.

§ 99.735–23 Gambling, betting, or lotteries.

An employee shall not, while on Government owned or leased property, or while on duty for the Government, participate in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in buying or selling a numbers slip or ticket. However,

this section does not prevent an employee from engaging in activities:

(a) Necessitated by his law enforcement duties; or

(b) Under section 3 of Executive Order 10927, related to fund raising activities for national voluntary agencies, or similar activities approved by the Department. Employees are reminded that illegal gambling is prohibited by the provisions of § 99.735-7(b), supra.

§ 99.735-25 Miscellaneous statutory provisions.

It shall be the duty of each employee to become acquainted with the laws which relate to ethical and other conduct as an employee of the Department and of the Government. The attention of employees is specifically directed to the statutory provisions relating to employee conduct set forth in Appendix B.

Subpart C—Statements of Employment and Financial Interest

§ 99.735-31 Employees required to submit statement.

(a) Unless required to report to the Chairman of the Civil Service Commission under section 401(a) of Executive Order 11222, each of the following employees shall submit a statement of employment and financial interest on a form provided by the Department:

(1) Each employee paid at a level based on the Executive schedule in subchapter II of Chapter 53 of title 5, United States Code;

(2) Each employee classified at GS-13 or above, under section 5332 of Title 5, United States Code or a comparable pay level under another authority, or in military pay grade 0-5 or above, who is in a position identified in Appendix C as a position the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprise; or

(iv) Other activities where the decision or action has an economic impact on the interests of a non-Federal enterprise;

(3) Each employee classified at GS-13 or above under section 5332 of Title 5, United States Code or a comparable pay level under another authority, or in military pay grade 0-5 or above, who is in a position identified in Appendix C as having duties and responsibilties which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict-of-interest situation and carry out the purpose of Title 18, Executive Order 11222, and this part; and

(4) Each employee classified below GS-13 under section 5332 of Title 5, United States Code or at a comparable pay level under another authority, or in a military pay grade below 0-5, who is in a position which otherwise meets the criteria in paragraphs (a)(2) or (3) of this section, on the basis that the inclusion has been specifically justified in writing to the Civil Service Commission that such inclusion is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict-of-interest situation.

(b) The Assistant Secretary for Administration and the head of each operating administration shall ensure that the portion of Appendix C enumerating positions within their respective jurisdictions is current, accurate and that the incumbents of those positions enumerated file their financial interest statements with the appropriate official. To discharge their responsibilities under this paragraph, the Assistant Secretary for Administration and the head of each operating administration shall, as necessary, amend the portion of Appendix C concerning positions within their jurisdiction, obtain necessary clearance from the Civil Service Commission for positions at GS-12 and below and publish such amendments in the FEDERAL REGISTER. At the time of such publication in the FEDERAL REGISTER, a copy of all such amendments shall be transmitted to the General Counsel.

(c) Any employee in a position which meets the criteria in paragraph (a)(2) of this section may be excluded from the reporting requirements of this section whenever the Secretary, his designee, or the head of an operating administration or his designee, as appropriate, determines in writing that the duties of the position are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review or the remote or inconsequential effect on the integrity of the Government.

(d) Information concerning financial interests which have been exempted under Appendix A from the prohibitions of section 208(a) of Title 18, United States Code, shall nevertheless be included in the statement required by this section.

§ 99.735-33 Time and place for submission of employee statements.

(a) Each employee who is subject to the reporting requirements of § 99.735-31 shall submit an employment and financial interest statement not later than:

(1) Forty-five days after the effective date of this part, if employed by the Department on or before that date; or

(2) Thirty days after entering on duty, but not earlier than thirty days after the effective date of this part, if appointed after that effective date.

(3) Thirty days after the occurrence of any event, transaction or any other thing which obligates an employee not otherwise required to submit a statement, to file such statement, but not earlier than thirty days after the effective date of this part.

(b) Each employee who is subject to the reporting requirements of § 99.735-31 shall submit employment and financial interest statements, including supplements thereto, as follows:

(1) Heads of operating administrations and employees of the Office of the Secretary shall submit their statements to the Department Counselor for review.

(2) Other employees shall submit their statement to an official designated by the head of their administration for review. The official designated must be at a level of administration to which a Deputy Counselor has been assigned and higher in the chain of authority than the employee whose statement is to be reviewed.

§ 99.735-35 Supplementary statements.

(a) Each employee required to file a statement shall, not later than July 31 of each year, file a supplementary statement, showing, as of June 30 of that year, any change in, or addition to, the information contained in his statement of employment and financial interest, and call attention to any information previously unreported that may present a conflict because of different job functions. If no change or addition occurs, a negative report is to be filed stating that there have been no changes or additions. In addition all supplementary statements filed under this section shall contain a record of any changes which occurred at any time during the year for which the report is filed. Notwithstanding the filing of the annual statement required by this section, each employee shall at all times avoid acquiring any financial interest that could result, or taking any action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or subpart B of this part.

(b) The head of each operating administration and the Assistant Secretary for Administration shall notify employees within their respective jurisdictions of the requirement to file a supplementary statement by July 31 of each year. However, no employee shall be relieved of the responsibility to file a timely supplementary statement on the ground of his failure to receive individual notification.

§ 99.735-37 Interest of employee's relatives.

Any interest of a spouse, minor child, or other relative who is a resident of the employee's household is considered to be an interest of the employee.

§ 99.735-39 Information not known by employee.

If any information required to be included on a statement of employment and financial interest or a supplementary statement, including any holding placed in trust, is not known to the employee but is known to another person (such as a trustee), the employee shall request that person to submit the information on his or her behalf.

§ 99.735-41 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interest or supplementary statement any information relating to said employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purposes of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are considered to be "business enterprises" and are required to be in-

cluded in the employee's statement of employment and financial interest.

§ 99.735–43 Confidentiality of employee's statement.

(a) Information provided in each statement of employment and financial interest and each supplementary statement shall be held in confidence. The reviewing officials, counselor, deputy counselors, and others who receive statements shall be responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from a statement except to carry out the purposes of this part. Information may not be disclosed to any person outside the Department, except as the Civil Service Commission or the Secretary may determine for good cause shown.

(b) Each statement of employment and financial interest and each supplementary statement shall be maintained in a separate file by the office or operating administration concerned, in accordance with the Privacy Act of 1974 (Pub. L. 93–579; 5 U.S.C. 552a(e)(11)) and guidelines issued thereunder.

§ 99.735–45 Effect of employee statements on other requirements.

Statements of employment and financial interest and supplementary statements required of employees and special Government employees are in addition to, and are not a substitute for or in derogation of, any similar requirements imposed by law, order, or regulation. The submission of a statement of supplementary statement by an employee or special Government employee does not permit said employee or any other person to participate in a matter in which that employee's or the other person's participation is prohibited by law, order, or regulation.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 99.735–51 Use of Government Employment.

A special Government employee may not use Government employment for a purpose which is, or gives the appearance of being, motivated by the desire for private gain for said employee or another person, particularly one with whom there is a marital, family, business, or financial tie.

§ 99.735–53 Use of inside information.

A special Government employee shall not use inside information obtained as a result of Government employment for private gain for self or another person, whether by direct personal action or by counsel, recommendation, or suggestion to another person, particularly one with whom there is a marital, family, business, or financial tie. However, this section does not prevent a special Government employee from using inside information for the purpose of teaching, lecturing, or writing if an appropriately designated official authorizes in writing, the use of such information upon a determination that any such use is in the public interest. For the purposes of this section, "inside information" means information obtained under Government authority which has not become a part of the body of public information.

§ 99.735–55 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom there is a marital, family, business, or financial tie.

§ 99.735–57 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee shall not while employed by the Department receive or solicit from any person having business with the Department anything of value as a gift, gratuity, loan, entertainment, or favor for self or another person, particularly one with whom there is a marital, family, business, or financial tie.

(b) The exceptions authorized for employees under § 99.735–9 shall also apply to special Government employees.

§ 99.735–59 Miscellaneous statutory provisions.

(a) Each special Government employee shall become acquainted with the statutes referred to in § 99.735–25 that relate to conduct as a special Government employee of the Department. Appendix D of this part explains the effect of the conflict of interest statutes on special Government employees. The Department follows the guidelines set forth in Appendix D of this part for obtaining and using the services of special Government employees.

§ 99.735–61 Specific regulations for special Government employees.

(a) Each special Government employee, employed as an expert or consultant, shall submit a statement of employment and financial interest, on a form provided by the Department, in the manner prescribed in § 99.735–33(b) and 99.735–35 no later than at the time of employment.

(b) Each special Government employee not employed as an expert or consultant shall submit a statement of employment and financial interest on a form provided by the Department, as provided in paragraph (a) of this section, unless an appropriate waiver is issued in writing by the office or operating administration in which he or she is employed based upon a finding that the duties of such position are of such a nature and at such a level of responsibility that the submission of a statement by the special Government employee is not necessary to protect the integrity of the Government.

(c) For the purposes of this section, the words "consultant" and "expert" have the meaning given to them by chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(d) Each special Government employee shall keep his statement current throughout his employment by the Department by submitting supplementary statements within five days after a change required to be reported occurs.

(e) Each statement of employment and financial interest and each supplementary statement of a special Government employee shall be held in confidence and maintained in the same manner as prescribed for statements submitted by employees.

Subpart E—Counseling; Interpretation; Review of Statements; Remedial Actions

§ 99.735–71 Interpretation and advisory service.

(a) The General Counsel of the Department shall act as the Department ethics Counselor and serve as the Department's designee to the Civil Service Commission on matters covered by this part and part 735 of Chapter I of Title 5 of the Code of Federal Regulations. The Department Counselor shall be responsible for coordinating the Department's counseling services provided under paragraph (b) of this section, for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part and part 735 of Chapter I of Title 5, Code of Federal Regulations are available to the deputy counselors designated in paragraph (b) of this section and may exercise the authority of the Secretary in any matter covered by this part.

(b) The following are designated as deputy counselors for the purpose of providing authoritative counseling and interpretations to employees and special Government employees who require advice and guidance on questions of conflicts of interest or any other matters of legal import covered by this part:

(1) The Assistant General Counsel for Operations and Legal Counsel, Office of the General Counsel.

(2) The chief legal officer of each operating administration of the Department, and his designees.

(c) Counseling on other ethical matters covered by this part will be provided by personnel specifically designated by the Assistant Secretary for Administration for employees in the Office of the Secretary, and by the head of the operating administration concerned for employees of that administration.

(d) The Assistant Secretary for Administration shall ensure that each employee and special Government employee is furnished a copy, and a clear and comprehensive summary, of these regulations within thirty days after approval of this part and within thirty days after approval of any amendments thereto. He shall also ensure that sufficient quantities are available to furnish each new employee and special Government em-

ployee a copy at the time of his or her entrance on duty.

§ 99.735–73 Review of statements.

(a) Each statement of employment and financial interest submitted under this part shall be promptly reviewed by the official authorized to receive that statement.

(b) Procedures governing the review of statements of employment and financial interest established by the office or operating administration concerned shall provide that:

(1) Whenever the review discloses an actual, apparent or alleged conflict of interests, the employee concerned shall be provided an opportunity to explain.

(2) If the actual, apparent or alleged conflict is not resolved on review by the explanation made by the employee concerned, the information pertaining to the matter shall be submitted to the head of the operating administration concerned or to the Secretary, in the case of any employee of the Office of the Secretary.

(3) The resolution of a conflict or apparent conflict of interest either on review or after submittal under paragraph (b)(2) of this section shall be effected promptly so that the conflict of or appearance of conflict is ended. The resolution of the conflict or appearance of conflict may be accomplished by one or more means, including any means listed in paragraph (b) of § 99.735–75. The resolution, whether by disciplinary action or otherwise, will be effected in accordance with applicable laws, Executive Orders, and regulations.

(c) After review of a statement of employment and financial interest has been completed, the reviewing official shall ensure that it is filed and protected from disclosure as required by § 99.735–43.

§ 99.735–75 Remedial actions.

(a) A violation of this part by an employee or special Government employee, in addition to any other penalty prescribed by law, may be cause for appropriate disciplinary action by the Department.

(b) If, after consideration of the explanation provided by the employee or special Government employee concerned under § 99.735–73, it is determined that remedial action is required, immediate action shall be taken to end the conflict or appearance of conflict of interest. Remedial action may include:

(1) Divestment by the employee or special Government employee of the conflicting interest;

(2) Disqualification for a particular assignment;

(3) Changes in assigned duties; or

(4) Disciplinary action.

Remedial action, including disciplinary action where appropriate, shall be taken in accordance with applicable laws, Executive Orders, and regulations after consultation with the Department Counselor. When remedial action is completed, the person taking that action shall inform the Department Counselor, or deputy counselor, as appropriate.

§ 99.735–77 Appeals.

(a) Any employee who believes that his or her position has been improperly included as one requiring the submission of a statement of employment and financial interest is entitled to have that inclusion reviewed under the employee grievance procedures applicable to the part of the Department in which employed.

(b) An employee has the right to appeal a determination requiring remedial or disciplinary action under this part. Such appeal shall be initiated in writing within ten days. Original determinations of the deputy counselors, or their designees, and the Assistant Secretary for Administration shall be appealed to the Departmental Ethics Counselor whose decision shall be final. Original determinations of the Departmental Ethics Counselor shall be appealed to the Secretary whose decision shall be final.

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

§ 99.735–81 Post-employment duties and responsibilities.

The duties and obligations of a Government employee (or a special Government employee) do not end when government service terminates by retirement, resignation, or for any other reason. In fact the U.S. Code sets forth specific criminal penalties for certain activities by former Government employees. To summarize broadly, section 207 of Title 18, U.S. Code, prohibits a former Government employee from acting as agent or attorney in various types of proceedings and matters on behalf of a non-Government party when the employee was involved in the subject matter while working for the Government. The duration and nature of the prohibitions depend in part on the depth of the employee's involvement in the matter while in Government service. Section 208 of the same title relates to activities performed while a Government employee that benefit an employee's prospective private employer. All Government employees and special Government employees should become familiar with the provisions of the two statutory sections cited, which have been made a part of this regulation as Appendix E, so that they will be aware of the restrictions which might affect them upon their termination from the Government service.

APPENDIX A—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTION 208(a) OF TITLE 18, UNITED STATES CODE

I. Pursuant to the authority of section 208(b) of Title 18, United States Code, the following are exempted from the prohibition of section 208(a) of Title 18, United States Code, because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his governmental capacity:

(1) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in an industry in which the possibility of conflicts arise.

(2) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by him or further payments to the plan by the organization with respect to the services of the employee. To the extent that the welfare or benefit plan is a profit sharing or stock bonus plan, however, this exemption shall not apply and the procedures prescribed in § 99.735–15c (c) through (e) will apply to the interest of that employee in the plan.

APPENDIX B—MISCELLANEOUS STATUTORY PROVISIONS RELATING TO EMPLOYEE CONDUCT

The following is a list of statutory provisions to which the attention of each employee is specifically directed by § 99.735–25. The list does not include specific laws relating to ethical or other conduct in individual situations not applicable generally to the employees of the Department.

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in subchapter III of Chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(q) The prohibition against soliciting funds for, or giving of gifts to an official superior (5 U.S.C. 7351).

(r) The statutory provisions setting forth the prohibitions on an employee or special government employee after termination of Government service (18 U.S.C. 207, 208).

(s) The statutory provisions in the Federal Election Act (2 U.S.C. 441i) limiting the

amount of honoraria which can be accepted by a Federal employee.

APPENDIX C—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENT OF EMPLOYMENT AND FINANCIAL INTEREST

I. OFFICE OF THE SECRETARY OF TRANSPORTATION

Special Assistant to the Secretary
Regional Representatives of the Secretary of Transportation
Special Assistant to the Deputy Secretary
*Executive Assistant to the Deputy Secretary
Special Assistant to the Deputy Under Secretary
*Assistant to the Deputy Under Secretary for Budget and Program Review
*Executive Secretary.
*Deputy Executive Secretary
*Special Assistant to Executive Secretary
Chairman, Contract Appeals Board
Members, Contract Appeals Board
Director, Office of Civil Rights
Deputy Director, Office of Civil Rights
Equal Opportunity Specialist, GS–13/15 engaged in Contract Compliance Review
Director, Office of Planning and Program Review
Director, Office of Budget
Director, Office of Public Affairs
Deputy Director, Office of Budget
*Assistant Director for Communications Planning and Programming
*Assistant Director for Communication Coordination
*Assistant Director for Public Information
*Director, Office of Deepwater Ports
*Deputy Director, Office of Deepwater Ports
Deputy Director, Office of Planning and Program Review

OFFICE OF THE GENERAL COUNSEL

Deputy General Counsel
Assistant General Counsel
Special Assistant to the General Counsel
Special Assistant for Environmental Affairs
Patent Counsel
*Chairman, Board of Correction of Military Records
*Executive Secretary, Board of Correction of Military Records

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY, PLANS AND INTERNATIONAL AFFAIRS

Deputy Assistant Secretary
*Deputy Assistant Secretary for Policy and Program Development
*Director Management Staff
*Special Assistant to the Assistant Secretary
*Director, Office of Transportation Systems Analysis and Information
Deputy Director, Office of Transportation Systems Analysis and Information
Deputy Director, Office of Transportation Systems Analysis and Information
Director, Office of Transportation Planning
Director, Office of Transportation Economic Analysis
Deputy Director, Office of Transpotration Economic Analysis
*Chief, Industry and Financial Analysis
Director, Office of International Transportation Programs
Deputy Director, Office of International Transportation Programs
Chief, International Cooperation Division
Chief, Technical Assistance Division
*Director, Transportation Energy Policy Staff
*Director, Air Transportation Policy Staff
*Deputy Director, Air Transportation Policy Staff
*Director, Office of Transportation Regulatory Policy
*Chief, Regulatory Coordination Division
*Chief, Regulatory Rates Division
*Chief, Regulatory Analysis Division

*New listing.

OFFICE OF THE ASSISTANT SECRETARY, ENVIRONMENT, SAFETY AND CONSUMER AFFAIRS

Deputy Assistant Secretary
*Executive Officer
Director, Office of Safety Affairs
Deputy Director, Office of Safety Affairs
*Assistant Director for Pipeline Safety Policy
*Assistant Director of Hazardous Materials Safety Policy
Director, Office of Consumer Affairs
Director, Office of Transportation Security
Director, Office of Facilitation
*Director, Office of Environmental Affairs

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

Deputy Assistant Secretary
*Director, Office of Personnel and Training
*Deputy Director, Office of Personnel and Training
*Director, Office of Management Systems
*Deputy Director, Office of Management Systems
Director, Office of Administrative Operations
Chief, Procurement Operations Division
Contract Specialist, GS–13/15
Chief, Publishing and Graphic Division
Printing Officer
Director, Office of Installations and Logistics
Deputy Director, Office of Installations and Logistics
*Procurement Officer
*Procurement Analyst, GS–13/15
*Program Analyst
*Supply Systems Analyst
*Chief, Facilities Management Division
*Policy and Programs Officer
Deputy Director, Office of Administrative Operations
Director, Office of Audits
Deputy Director, Office of Audits
Supervisory Auditor
Auditor, GS–13/15
Director, Office of Emergency Transportation
Deputy Director, Office of Emergency Transportation

OFFICE OF THE ASSISTANT SECRETARY FOR SYSTEMS DEVELOPMENT AND TECHNOLOGY

Deputy Assistant Secretary
Deputy Assistant Secretary for Systems Engineering
*Executive Officer
Chief Scientist
Director, Office of R & D Plans and Resources
Director, Office of R & D Policy
Director, Office of Systems Engineering
*Assistant Director for Project Management
Assistant Director for Systems Development
Assistant Director for Telecommunications
Director, Office of University Research
Director, Office of Noise Abatement

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

*Deputy Assistant Secretary
*Special Assistant to the Assistant Secretary
Director, Office of Congressional Relations
Congressional Relations Officers, GS–13/15
Director, Office of Intergovernmental Affairs
Intergovernmental Liaison Officer
*Community Assistance Coordinator

MATERIALS TRANSPORTATION BUREAU

*Director
Director, Office of Hazardous Materials Operations
Deputy Director, Office of Hazardous Materials Operations
Director, Office of Pipeline Safety Operations
Deputy Director, Office of Pipeline Safety Operations
Administrative Officer

II. FEDERAL AVIATION ADMINISTRATION

OFFICE OF GENERAL AVIATION

Assistant Administrator
Deputy Assistant Administrator

OFFICE OF AVIATION MEDICINE

Federal Air Surgeon
Deputy Federal Air Surgeon
Chief, Aeromedical Applications Division
Chief, Research Planning Branch

OFFICE OF INTERNATIONAL AVIATION AFFAIRS

Assistant Administrator
Deputy Assistant Administrator

OFFICE OF AVIATION POLICY

*Director
*Deputy Director
*Chief, Policy Development Division
*Chief, Policy Analysis Division
*Financial Economist

OFFICE OF INVESTIGATIONS AND SECURITY

Director
Deputy Director
Chief, Investigations Division

OFFICE OF AVIATION SYSTEM PLANS

*Director
*Deputy Director
*Chief, System Requirements Division
*Chief, Plans Development Division
*Chief, Planning Support Staff

OFFICE OF ENVIRONMENTAL QUALITY

Director
Deputy Director
*Chief, Environmental Technical and Regulatory Division
*Chief Environmental Scientist

OFFICE OF MANAGEMENT SYSTEMS

Director
Deputy Director
Chief, Data Systems Division
*Chief, Information and Statistics Division

OFFICE OF BUDGET

Director
Deputy Director

OFFICE OF SYSTEMS ENGINEERING MANAGEMENT

Director
*Deputy Director
*Chief, Advanced Concepts Staff
*Chief, Systems Engineering Division
*Chief, Technical Programs Division

AIR TRAFFIC SERVICE

Director
Deputy Director
Chief, ATC System Programs Division
Chief, Flight Services Division
Chief, Airspace and Air Traffic Rules Division
Chief, Automation Division
*Chief, Airspace Obstruction and Airports Branch

AIRPORTS SERVICE

Director
Deputy Director
Chief and Assistant Chief, Development Programs Division
*Chief and Assistant Chief, Airports Planning Division
*Chief, Environmental Planning Branch
*Chief, Planning Grant Branch
*Airport Planning Specialists, GS–13/14
*Civil Engineers, GS–13/14
*Community Planners, GS–13/14
*Chief, National System Planning Branch
*Chief, Program Establishment Branch
*Chief, Program Requirements Branch
Chief, Compliance and Property Conveyance Branch
*Airport Programs Specialists, GS–13/14

AIRWAY FACILITIES SERVICE

Director
Deputy Director
Executive Officer
*Technical Assistant to the Director
Division/Staff Chiefs and Assistant Division Chiefs
Supervisory Engineer
*Program Analysis Officer
*Technical Officer
*Technical Officer Representative

CIVIL AVIATION SECURITY SERVICE

Director
Deputy Director
*Executive Officer
*Chief, Technical Security Division
*Chief, Ground Operations Security Division
*Chief, Air Operations Security Division
*Chief, Operations Liaison Staff
*Chief, Foreign Air Carrier Security Division

FLIGHT STANDARDS SERVICE

Director
Deputy Director
Chief, Engineering and Manufacturing Division
*Chief, Air Carrier Division
*Chief, General Aviation Division

LOGISTICS SERVICE

Director
Deputy Director
Chief and Assistant Chief, Contracts Division
Procurement Officer, GS–13 and above
Contract Price Analyst, GS–13 and above
Contract Specialist, GS–13 and above
Supervisory Contract Specialist
Supervisory Property Administration Specialist
Property Administration Specialist, GS–13 and above
Transportation Specialist, GS–13 and above
*Industry Liaison Officer
*Chief and Assistant Chief, Policy and Plans Division
*General Supply Officer, GS–13 and above (Plans Branch)
*Chairman, Contract Review Board
*Chairman, Sole Source Board
*Minority Small Business Coordinator
*Chief and Assistant Chief, Material Management Division
*Chief, Personal Property Management Branch
*Program Analyst (Communications), GS–14
*Communications Management Specialist, GS–13
*Space, Property and Communications Officer, GS–13
*Chief, Real Property and Space Management Branch
*General Supply Specialist (Furniture Standards)
*Chief and Assistant Chief, Industrial Division
*Industrial Engineer, GS–14 and above
*Industrial Specialist, GS–13 and above
*Chief, Plans Branch
*Procurement Analyst (Plans Branch)

SYSTEMS RESEARCH AND DEVELOPMENT SERVICE

Director
Deputy Director
Division Chiefs and Assistant Division Chiefs
*Technical Advisor, ATC Systems Division
*Chief, Program Management Staff
*Assistant Chief, Program Management Staff
*Chief, Special Program Staff, Aircraft Safety & Noise Abatement Division
*Chief, Spectrum Analysis Branch, Analysis Division

METROPOLITAN WASHINGTON AIRPORTS

*Director
*Deputy Director
Airport Managers
Headquarters Staff Chiefs
*Special Assistants

*New listing.

*General Attorney
*Chief, Contract/Property Management Branch (GS–12)
Chiefs, Operations and Safety Divisions
Chiefs and Assistant Chiefs, Engineering and Maintenance Divisions
Chiefs, Engineering Branches
*Chief, Revenue Contract Branch (GS–12)
Chiefs and Assistant Chiefs, Financial Management Divisions
*Chiefs, Property Management Branches (GS–12)
Contract Specialists and Negotiators, GS–13 and above
*Operations and Safety Officers
*Engineers and Architects, GS–13 and above
*Chiefs, Budget and Administrative Branches
*Chiefs, Fiscal Administration Branches

OFFICE OF PERSONNEL AND TRAINING

*Director
*Deputy Director

OFFICE OF LABOR RELATIONS

*Director
*Deputy Director

OFFICE OF ACCOUNTING AND AUDIT

*Director
*Deputy Director
*Technical Assistant to the Director
*Division Chiefs and Assistant Division Chiefs
*Supervisory Auditors

NATIONAL AVIATION FACILITIES EXPERIMENTAL CENTER

Director
Deputy Director
Executive Officer
*Chief, Engineering Management Staff
Center Counsel
*Chief, Logistics Division
*Chief, Contracts and Purchase Branch
*Chief, Materiel Branch
*Chief, Audit Division
*Chief, Air Traffic Systems Division
*Chief, Systems Test Branch
*Chief, Surveillance Systems Branch
*Chief, Laboratory Management Branch
*Chief, Systems and Engineering Equipment Branch
*Chief, Simulation and Analysis Division
*Chief, Analysis Branch
*Chief, Systems Development Branch Electronics Engineer, GS–14
*Chief, System Engineering Section
*ATC Specialist R&D, GS–14
Chief, Communications and Guidance Division
*Chief, Landing Branch
Chief, Communications and Navigation Branch
Chief, Aircraft and Airports Safety Division
*Chief, Structures Branch
*Chief, Propulsion and Fire Protection Branch
*Chief, Instruments and Flight Test Branch
*Chief, Airports Branch
*Chief, Supporting Services Division
*Chief, Aviation Facilities Division
*Chief, Flight Operations Branch
*Chief, Investigations and Security Division

AERONAUTICAL CENTER

Director
Deputy Director
Executive Officer
*Aeronautical Center Counsel
*Chief, Operations Staff
*Chief, Civil Rights Staff
*Chief, Personnel Management Division
*Chief, Accounting Division
*Chief, Budget Division
*Chief, Administrative Services Division
*Chief, Plant Engineering Division
*Chief, Procurement Division
*Chief, Contracting Branch
*Chief, Contract Management Branch
*Chief, Procurement and Systems Branch
*Chief, Electrical, Electronics and Realty Contracting Section
*Chief, Aviation, Medical and Training Contracting Section
*Chief, Electrical and Electronics Management Section
*Chief, Aviation, Medical and Training Management Section
*Chief, Audit Division
*Chief, Investigations and Security Division
*Chief, Civil Aeromedical Institute
*Chief, Flight Standards Technical Division
*Chief, Data Services Division
Chief, FAA Depot
*Superintendent, FAA Management Training School
Chief, Aircraft Services Base
Superintendent, FAA Academy
*Chief, Airways Engineering Support Division

REGIONS

Regional Director (Includes Assistant Administrators and Deputy Assistant Administrators for Europe, Africa and Middle East Regions)
Deputy Regional Director
Executive Officer
*Area Managers, San Juan and Balboa
Resident Directors, Guam and Samoa
Supervisory Auditor
Procurement Officer/Specialist, GS–13 and above
Supply Management Officer/Specialist, GS–13 and above
*Chief, Civil Rights Staff
Realty Supply Officer/Specialist, GS–13 and above
Realty Officer
Regional Counsel
Medical Officer
Chief, Accounting Division
Chief and Assistant Chief of an Air Traffic, Flight Standards, Airports, Airway Facilities Division
*Chief, Air Transportation Security Division
*Chief, Air Security Branch
*Chief, Air Transportation Security Field Office
*Principal Security Inspector (some GS–12's)
*Chief and Assistant Chief, Logistics Division
*Supervisory Contract Specialist
*Chief and Assistant Chief of a General Aviation District Office, Air Carrier District Office, Flight Standards District Office, and Airports District Office
Principal Inspector, except at a Flight Inspection National Field Office, with a title such as Air Carrier Inspector, General Aviation Inspector, Air Carrier Operations Inspector, Aviation Operations Inspector, Aviation Safety Officer/Inspector, Airborne Instrument Specialist, Aviation Maintenance Specialist, Aviation Electronic Specialist
Aviation Safety Inspector/Specialist (Manufacturing), GS–13 and above
Aerospace Engineer, GS–13 and above
Flight Test Pilot/Specialist, GS–13 and above

JUSTIFICATION FOR INCLUSION OF POSITIONS IN APPENDIX C OCCUPIED BY INCUMBENTS BELOW GS–13

CHIEF, CONTRACT/PROPERTY MANAGEMENT BRANCH

(Supervisory Contract Administrator, WA–3456, GS–1102–12)

The incumbent of this position supervises the Contract Management Branch and is responsible for the administration of air carrier, tenant, and concessionaire contracts at Washington National Airport. He also oversees collection, disbursement, safeguarding, and preliminary accountability of various funds collected or disbursed through Gov-

ernment operations at Washington National Airport.

CHIEF, REVENUE CONTRACT BRANCH

(Supervisory Contract Specialist, WA-3319, GS-1102-12)

The incumbent of this position supervises the Revenue Contract Branch and is responsible for the administration of air carrier, tenant, and concessionaire contracts at Dulles International Airport. He also oversees collection, disbursement, safeguarding, and preliminary accountability of various funds collected or disbursed through Government operations at Dulles.

CHIEFS, PROPERTY MANAGEMENT BRANCHES

(General Supply Officer, WA-1291, GS-2001-12, Washington National Airport)
(General Supply Officer, WA-1290, GS-2001-12, Dulles International Airport)

The incumbents of these positions supervise the Property Management Branches of National and Dulles Airports. They are responsible for the procurement of equipment, supplies, materials, and services for the Airports. They are also responsible for the physical accountability of real as well as personal property at the Airports.

PRINCIPAL SECURITY INSPECTOR

(Security Specialist, NW-5250, GS-080-12)

The incumbent of this position serves as Principal Security Agent assigned to select air carriers and represent FAA on all aviation security matters involving these carriers. In this capacity, he plays a major role in approving the security programs of the carriers.

III. SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Assistant Administrator/Resident Manager
Assistant Administrator for Development
General Counsel
Comptroller
*Director, Office of Procurement & Supply (GS-13)
*Director, Office of Comprehensive Planning (GS-14)

IV. URBAN MASS TRANSPORTATION ADMINISTRATION

Special Assistant to the Administrator
*Special Assistant to Deputy Administrator, Associate Administrator for Administration
*Contract Price Analyst
Procurement Analyst
Financial Manager
Supervisory Auditor
Contract Specialist GS-13 and above
Auditor, GS-13/14
*Management Analyst GS-13 and above
*Accountants GS-13 and above
*Budget/Analyst GS-13 and above
*Director, Office of Administrative Services
*Director, Office of Procurement and Third Party Contract Review
Chief Counsel
Assistant Chief Counsel
Attorney Advisor GS-13 and above
Director of Civil Rights
Equal Opportunity Specialist GS-13 and above
Associate Administrator for Policy and Program Development
*Director, Office of Program Development
*Director, Office of Program Evaluation
*Director, Office of Policy Research
*Associate Administrator for Transit Assistance
*Director, Office of Grants Assistance
*Director, Office of Program Support
*Director, Office of Program Analysis
Urban Mass Transportation Representative GS-13 and above
*General Engineers GS-13 and above
*Mechanical Engineers GS-13 and above
*Relocation Specialist GS-13 and above
*Transit Operations Specialist GS-13
*Program Analyst GS-13 and above
Associate Administrator for Research and Development
*Director Office of Bus and Paratransit Technology
*Director, Office of Rail Technology
*Director, Office of Safety and Product Qualification
*Director, Office of New Systems and Automation
*Electrical Engineer GS-13 and above
*Electronic Engineer GS-13 and above
*Safety Engineer GS-14 and above
*Operations Research Analyst GS-13 and above
*Director A.G.T. Applications Division
Director UMTA Programs—High Speed Ground Test Center—Pueblo, Colorado
*Associate Administrator for Transportation Management and Demonstrations
*Transit Industry Liaison GS-15
*Director, Office of Transit Management
*Director, Office of Services Methods Demonstrations
*Transportation Project Manager GS-13 and above
*Community Planners GS-13 and above
Regional Directors and Chiefs

V. FEDERAL HIGHWAY ADMINISTRATION

Executive Director

OFFICE OF THE CHIEF COUNCIL

Chief Counsel
Deputy Chief Counsel
Assistant Chief Counsel

OFFICE OF PROGRAM REVIEW AND INVESTIGATIONS

Director

OFFICE OF CIVIL RIGHTS

Director
Chief, Contract Compliance Division
Civil Rights Specialist, GS-13/14, engaged in Contract Compliance Review

NATIONAL HIGHWAY INSTITUTE

Director
State Programs Officer
Assistant State Programs Officer
Federal Programs Officer
Assistant Federal Programs Officer
University and Industry Programs Officer
Assistant University and Industry Programs Officer

ASSOCIATE ADMINISTRATION FOR PLANNING

Associate Administrator
Director, Office of Program and Policy Planning
Chief, Transportation Economics Division
Chief, Policy Planning Division
Chief, Program Coordination Division
Director, Office of Highway Planning
Chief, Program Management Division
Chief, Urban Planning Division

ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
*Program Coordinator
Director, Office of Research
Director, Office of Development
Chief, Program Analysis Staff
Chief, Structures & Applied Mechanics Division
Deputy Chief, Structures & Applied Mechanics Division
Chief, Bridge Structures Group
Chief, Protective Systems Group
Chief, Pavement Systems Group
Chief, Materials Division
Deputy Chief, Materials Division
Chief, Soils & Exploratory Techniques Group
Chief, Paving & Structure Materials Group
Chief, Chemistry & Coatings Group
Chief, Traffic Systems Division
Deputy Chief, Traffic Systems Division
Chief, Analysis and Experimentation Group
Chief, Systems Development & Technology Group
Chief, Systems Requirements & Evaluation Group
Chief, Environmental Design & Control Division
Deputy Chief, Environmental Design & Control Division
Chief, Socio-Economic & Environment Group
Chief, Environmental Control Group
Chief, Engineering Services Division
Chief, Electronic Instrumentation Group
Chief, Computer Technology Group
Chief, Mechanical Design & Experimentation Fabrication Group
Chief, Implementation Division
Deputy Chief, Implementation Division
Chief, Engineering Location & Design Group
Chief, Construction, Materials and Methods Group

ASSOCIATE ADMINISTRATOR FOR RIGHT-OF-WAY AND ENVIRONMENT

Associate Administrator
Director, Office of Environmental Policy
Chief, Environmental Programs Division
Chief, Environmental Quality Division
Director, Office of Right-of-Way
Chief, Real Property Acquisition Division
Chief, Relocation Assistance Division

ASSOCIATE ADMINISTRATOR FOR ENGINEERING AND TRAFFIC OPERATIONS

Associate Administrator
Director, Office of Highway Operations
Chief, Federal Highway Projects Division
Chief, Foreign Projects Division
Chief, Construction and Maintenance Division
Highway Engineer, GS-15, Construction and Maintenance Division
Chief, Defense Plans and Operations Division
Director, Office of Traffic Operations
Chief, Traffic Performance and Analysis Division
Director, Office of Engineering
Chief, Federal-Aid Division
Chief, Highway Design Division
Chief, Bridge Division
Highway Engineer, GS-15, Divisions in Office of Engineering

ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS AND HIGHWAY SAFETY

Associate Administrator
Director, Office of Highway Safety
Chief, Program Management Division
Chief, Technical Development and Standards Division
Director, Bureau of Motor Carrier Safety
Deputy Director, Bureau of Motor Carrier Safety
Chief, Regulations Division
Chief, Compliance Division
Deputy Chief, Compliance Division
*Chief, Accident Analysis Division

ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Deputy Associate Administrator
*Chief, Operations and Services Division
*Director, Office of Contracts and Procurement
*Chief, Procurement Management Support Division
*Chief, Services Procurement Division
*Chief, Contract Administration Division
*Senior Procurement Analyst
Supervisory Contract and Procurement Specialist, GS-13/14

* New listing.

FIELD INSTALLATIONS

Regional Federal Highway Administrator or Regional Engineer
Deputy Regional Federal Highway Administrator
Director, Office of Federal Highway Projects
Deputy Director, Office of Federal Highway Projects
Chief, Construction Division or Director, Office of Construction and Maintenance
Regional Civil Rights Officer, GS–14
Civil Rights Specialist, GS–13
Regional Audit Manager
*Auditor-in-Charge or Assistant Regional Audit Manager for (State)
*Division Administrator
Director, Motor Carrier Safety Office
Regional Hazardous Materials Officer
Regional Accident Investigator
Motor Carrier Safety Investigator

VI. FEDERAL RAILROAD ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Deputy Administrator
Special Assistant to the Administrator
Executive Director, Minority Resource Center
Civil Rights Officer
Director, Office of Public Affairs

OFFICE OF PLANNING AND BUDGET DEVELOPMENT

Director
Chief, Budget Development Division
Chief, Planning Division
Chief, Program Review Division

OFFICE OF ADMINISTRATION

Associate Administrator
Director, Office of Procurement
Director, Office of Administrative Operations
Contract Officers, GS–13/14

OFFICE OF THE CHIEF COUNSEL

Chief Counsel
Assistant Chief Counsels
Contract Counsel

OFFICE OF FEDERAL ASSISTANCE

Associate Administrator
Director, Office of Rail Assistance Programs
Director, Rail Freight Division
Chief, Rail Passenger Programs Division
Director, Office of State Rail Programs
Manager, State Safety Program
Chief, Planning Assistance Division
Chief, Programs Division

NORTHEAST CORRIDOR PROJECT

Director
Deputy Director
Chief, Engineering Division
Chief, Operations Division
Chief, Project Control Division
Chief, Planning and Analysis Division

OFFICE OF RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Freight Systems
Director, Officer of Passenger Systems
Director, Office of Rail Safety Research

OFFICE OF POLICY AND PROGRAM DEVELOPMENT

Associate Administrator
Deputy Associate Administrator
Director, Office of Rail Economics and Policy Development
Director, Office of Rail Systems Analysis and Programs Division
Director, National Rail Systems Project Office

OFFICE OF SAFETY

Associate Administrator
Deputy Associate Administrator
Director, Office of Safety Programs
Director, Office of Standards and Procedures

*New listing.

REGIONAL OFFICES

Regional Administrators
Directors of Safety
Directors of Federal Assistance

TRANSPORTATION TEST CENTER

Director

ALASKA RAILROAD

General Manager
Assistant General Manager
Chief, Administration Division
Real Estate Officer
Contracts and Procurement Officer
Chief Counsel
Operations Officer
Traffic Officer

VII. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Director, Office of Civil Rights
Equal Opportunity Specialist, GS–13 and above, engaged in Contract Administration
Chief Counsel
Attorney-Advisor, all grade levels

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR MOTOR VEHICLE PROGRAMS

Associate Administrator
Director, Engineering Test Facility
Chief, Project Engineering Division
Chief, Testing Operations Division
Director, Engineering Systems Staff
Cost and Lead-Time Engineer and Cost and Lead-Time Analyst
Director, Office of Standards Enforcement
Chief, Validation Division
Chief, Verification Division
All other Office of Standards Enforcement professional personnel, regardless of grade level.
Director, Office of Crash Avoidance
Chief, Driver Environment Division
Chief, Handling and Stability Division
Chief, Tire Division
All other Office of Crash Avoidance professional personnel, GS–13 and above.
Director, Office of Crashworthiness
Chief, Standards Engineering Division
Chief, Standards Preparation Division
Chief, Automobile Ratings Division
All other Office of Crashworthiness professional personnel, GS–13 and above.
Director, Office of Defects Investigation
All other Office of Defects Investigation professional personnel.
Any other employees, regardless of grade, designated in MVP to serve as Contract Technical Managers and supervisors of such employees.

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS

Associate Administrator
Director, Office of Driver and Pedestrian Programs
Chief, Program and Demonstration Management Division
Chief, Demonstrations Branch
Chief, Program Definition Branch
Chief, Demonstration Evaluation Division
Chief, Enforcement and Emergency Services Division
Chief, Emergency Medical Services Branch,
Chief, Police Traffic Services Branch
Chief, Driver and Pedestrian Education Division
Chief, Driver Programs Branch
Chief, Pedestrian and Cyclist Branch
Chief, Safety Belt Usage Branch
Chief, Driver Licensing and Adjudication Division
Chief, Licensing and Regulations Branch
Chief, Adjudication Branch
Chief, Driver Register Branch
Director, Office of State Program Assistance
Chief, Program Management Division
Chief, Manpower Development Division
Chief, Program Review and Analysis Division
Chief, Information and Records Systems Division
Director, Office of State Vehicle Programs
Chief, Engineering and Demonstrations Division
Chief, Vehicles-in-Use Standards Branch
Chief, State Program Division
All other Office of State Vehicle Programs professional personnel, GS–13 and above.
Any other employees, regardless of grade, designated in TSP to serve as Contract Technical Managers and supervisors of such employees.

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Vehicle Safety Research
Chief, Crash Avoidance Research Division
Chief, Structures Research Division
Director, Safety Research Laboratory
Chief, Braking Systems Division
Chief, Occupant Restraint Systems Division
Chief, Tire Systems Division
Director, Office of Statistics and Analysis,
Chief, Mathematical Analysis Division,
Chief, Accident Investigation Division,
Chief, Statistical Programs Division
Director, Office of Driver and Pedestrian Research
Any other employees, regardless of grade, designated in R&D to serve as Contract Technical Managers, and supervisors of such employees.

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR PLANNING AND EVALUATION

Associate Administrator
Director, Office of Program Planning
Director, Office of Program Evaluation
Any other employees, regardless of grade, designated in P&E to serve as Contract Technical Managers, and supervisors of such employees.

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Director, Office of Contracts and Procurement
Contract Specialist, GS–13, 14
Director, Office of Financial Management
Director, Office of Management Services,
Chief, Technical Services Division, Chief, General Services Division
Any other employees, regardless of grade, designated in ADMIN to serve as Contract Technical Managers, and supervisors of such employees.
Any other employees regardless of grade that designates the contractor to perform graphics or other art work.

REGIONAL OFFICES

Regional Administrators
Any other NHTSA employees, regardless of grade, designated to serve as a Contract Technical Manager, and supervisors of such employees.

VIII. UNITED STATES COAST GUARD

Commandant
Vice Commandant
Chief of Staff
*Deputy Chief of Staff
Comptroller
Deputy Comptroller
Chief, Procurement Division
Chief, Administrative and Review Branch
Chief, Quality Assurance Division
Supervisory Contract Specialist, GS–13 and above

Contract Specialist, GS–13 and above
Chief, Office of Operations
Deputy Chief, Office of Operations
Chief, Office of Engineering
Deputy Chief, Office of Engineering
Chief Counsel
Deputy Chief Counsel
*Chief, Claims and Litigation Division, Office of Chief Counsel
*Chief, Procurment Law Division, Office of Chief Counsel
Chief, Office of Merchant Marine Safety
Deputy Chief, Office of Merchant Marine Safety
Chief, Merchant Vessel Documentation Division
*Chief, Merchant Marine Technical Division
*Chief, Merchant Vessel Inspection Division
*Assistant Chief, Merchant Vessel Inspection Division
*Chief, Marchant Vessel Personnel Division
*Traveling Inspector, Office of Merchant Marine Safety
*Chief, Cargo & Hazardous Materials Division
*Assistant Chief, Cargo & Hazardous Materials Division
Chief, Office of Research and Development
Deputy Chief, Office of Research and Development
Chief Scientist
Chief, Office of Boating Safety
Deputy Chief, Office of Boating Safety
*Chief, Boating Technical Division
*Chief, State Liaison and Compliance Division, Office of Boating Safety
Commander, U.S. Coast Guard Districts
Officer in Charge, Marine Inspection Office
Captain of the Port
Director, Great Lakes Pilotage Staff
Chief, Office of Civil Rights
*Deputy Chief, Office of Civil Rights
*Equal Opportunity Specialist (Employment), GS–13, Office of Civil Rights
Civil Rights Specialist, GS–13 and above, engaged in Contract Compliance Review
Chief, Office of Marine Environment and Systems
Deputy Chief, Office of Marine Environment and Systems
Chief, Bridge Division
*Assistant Chief, Bridge Division
Project Manager, Deepwater Ports Project
*Assistant Project Manager, Deepwater Ports Project
*Chief, Marine Environmental Protection Division
*Assistant Chief, Marine Environmental Protection Division
*Chief, Port Safety & Law Enforcement Division
*Assistant Chief, Port Safety & Law Enforcement Division
*District Chiefs of Staff
*District Chiefs, Boating Safety Division
*District Chiefs, Engineering Division
*District Chiefs, Naval Engineering Branch
*District Comptrollers
*District Chiefs, Marine Safety Branch
*Commanding Officer, Marine Safety Office

APPENDIX D—EXTRACT FROM APPENDIX C OF CIVIL SERVICE FEDERAL PERSONNEL MANUAL SYSTEM ON SPECIAL GOVERNMENT EMPLOYEES (INCLUDING GUIDELINES FOR OBTAINING AND UTILIZING THE SERVICES OF SPECIAL GOVERNMENT EMPLOYEES)

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APPENDIX E—STATUTES REGULATING POST-EMPLOYMENT RESPONSIBILITIES OF GOVERNMENT AND SPECIAL GOVERNMENT EMPLOYEES

§ 207 *Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.*

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section. (Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

§ 208 *Acts affecting a personal financial interest.*

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other preceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. (Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1124.)

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

[FR Doc.77–1284 Filed 1–13–77;8:45 am]

*New listing.

federal register

FRIDAY, JANUARY 14, 1977

PART VI

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTUCTION

General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders, 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Arkansas:	
AR76–4130	July 23, 1976.
Florida:	
FL76–1133; FL76–1135	Nov. 26, 1976.
Georgia:	
GA75–1025	Feb. 28, 1975.
GA77–5005	Jan. 4, 1977.
Idaho:	
ID76–5112	Nov. 26, 1976.
Illinois:	
IL76–2126; IL76–2129	Oct. 8, 1976.
IL76–2131	Oct. 22, 1976.
IL76–2149	Dec. 10, 1976.
Kansas:	
KS76–4134	July 30, 1976.
Massachusetts:	
MA76–2106	Sept. 3, 1976.
Mississippi:	
MS76–1020	Jan. 30, 1976.
MS76–1137	Dec. 17, 1976.
Montana:	
MT76–5099; MT76–5100	Oct. 29, 1976.
MT76–5103	Nov. 19, 1976.
Nevada:	
NV76–5004	Jan. 4, 1977.
NV76–5080	Aug. 20, 1976.
NV76–5114	Dec. 10, 1976.
North Carolina:	
GA77–5005	Jan. 4, 1977.
Oklahoma:	
OK76–4137; OK76–4139	July 30, 1976.
OK76–4186	Nov. 19, 1976.
OK76–4189	Nov. 26, 1976.
South Carolina:	
GA77–5005	Jan. 4, 1977.
Vermont:	
VT76–2170	Dec. 10, 1976.
Virginia:	
GA77–5005	Jan. 4, 1977.
Washington, D.C.:	
GA77–5005	Jan. 4, 1977.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:	
FL76–1018 (FL77–1004)	Jan. 23, 1976.
Maryland:	
MD76–3272 (MD77–3017); MD76–3273 (MD77–3018); MD76–3274 (MD 77–3019); MD76–3275 (MD77–3020); MD76–3276 (MD77–3021).	Nov. 12, 1976.
Oklahoma:	
OK76–4136 (OK77–4002)	July 30, 1976

Signed at Washington, D.C., this 7th day of January 1977.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 1

DECISION NO. AR76-4130 - Mod. #3
(41 FR 30509 - July 23, 1976)
Conway, Faulkner, Perry, Van Buren & Cleburne Counties, Arkansas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS (Cleburne and Van Buren Counties)					
Carpenters	$7.93	.45	.35		.04
Millwrights-Piledrivermen	8.73	.45	.35		.04

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION # FL76-1133 - Mod. #2 (41 FR-52233 - November 26, 1976) Escambia, Okaloosa, Santa Rosa & Walton Counties, Florida.					
Change:					
Asbestos workers	9.90	.495	1.00	a	.02
Painters (all classifications)	4.50				
Plumbers & Steamfitters (excluding Walton County east of route 331).	10.82	.55	95	b	.05
Add: FOOTNOTES					
a. Two paid holidays: Labor Day & Thanksgiving Day					
b. Eight paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday following Thanksgiving Day, Christmas Eve Day, Christmas Day.					
Decision # FL76-1135 - Mod. # 2 (41 FR 52234 November 26, 1976) Leon County, Florida.					
Change:					
Electricians	9.25		7%		0.5%
DECISION # GA75-1025 - Mod. # 4 (40 FR-8691 - February 28, 1975) Hall County, Georgia					
Change:					
Carpenters & Resilient Tile	5.53				
Electricians, Commercial	8.00	8%	8% + 1%		.25%
Electricians, Industrial	9.95	8%	8% + 1%		.25%
Plumbers & Fitters	5.45				

MODIFICATIONS P. 3

DECISION #ID76-5112 - Mod. #3
(41 FR 52236 - November 26, 1976)
Statewide Idaho

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties:					
Electricians	$12.13	.57	1% + .40		.02
Cable Splicers	12.53	.57	1% + .40		.02
Line Construction Workers:					
(Area 1):					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties:					
Cable Splicers; Leadman Pole Sprayer	12.23	.35	1%	.10	1/2%
Lineman; Pole Sprayer; Heavy Line Equipment Man; Certified Lineman Welder	11.04	.35	1%	.10	1/2%
Tree Trimmer	9.97	.35	1%	.10	1/2%
Line Equipment Man	9.52	.35	1%	.10	1/2%
Head Groundman (Chipper); Head Groundman; Powderman; Jackhammerman	8.31	.35	1%	.10	1/2%
Groundman; Tree Trimmer Helper	7.83	.35	1%	.10	1/2%
Painters:					
Ada, Adams, Boise, Canyon, Elmore (except Mt. Home AFB), Gem, Gooding (western third of County including City of Bliss), Idaho County (south of the 46th Parallel), Owyhee, Payette, Valley, Washington Counties:					
Painters and Tapers	8.75	.45	.30		.07

MODIFICATIONS P. 4

DECISION #ID76-5112 (Cont'd):

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters (Cont'd):					
Elmore (Mt. Home AFB):					
Painters and Tapers	$9.75	.45	.30		.07
Plasterers:					
Remaining Counties:	9.07	.50	.45	.35	
Plumbers:					
Remaining Counties and Idaho County (south of the 46th Parallel):					
Plumbers	10.42	.59	.70		.10
Helpers	7.29	.59	.70		.10
Sheet Metal Workers:					
Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties	12.10	.57	1.225		.10
Soft Floor Layers:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties	9.05	.40	.60		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2126 - Mod. #1 (41 FR 44630 - October 8, 1976) Logan, Menard & Mason Counties, Illinois					
CHANGE:					
Electricians:					
Logan & Menard Counties; the Twps. of Bath, Crane Creek, Kilburne, Lynchburg, Mason City & Salt Creek in Mason County	$10.87	.40	11%+.40		.1 of 1%
Roofers:					
Composition	11.78				
Slate-Tile & Precast Slab	12.03				
Sheet Metal Workers	10.62	3%+.40	.50		.05
DECISION #IL76-2129 - Mod. #1 (41 FR 44625 - October 8, 1976) Cass, Morgan & Scott Counties, Illinois					
CHANGE:					
Carpenters:					
Piledrivermen	9.45	.45	.25		.02
Millwrights	9.20	.45	.25		.02
Electricians	10.87	.40	11%+.40		.1 of 1%
Roofers:					
Composition	11.78				
Slate-Tile & Precast Slab	12.03				
Sheet Metal Workers	10.62	3%+.40	.50		.05
DECISION #IL76-2131 - Mod. #1 (41 FR 46828 - October 22, 1976) Sangamon County, Illinois					
CHANGE:					
Carpenters:					
Residential					
1 & 2 Family Dwellings	7.50	.45	.45		.06
Electricians	10.87	.40	11%+.40		.1 of 1%
Roofers:					
Composition	11.78				
Slate-Tile & Precast Slab	12.03				
Sheet Metal Workers	10.62	3%+.40	.50		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2149 - Mod. #1 (41 54128 - December 10, 1976) Adams, Brown, Cass, Christian, Logan, Mason, Menard, Morgan, Pike, Sangamon, Schuyler & Scott Counties, Illinois					
CHANGE:					
Electricians:					
Sangamon, Logan, Menard, Cass, Morgan & Scott Counties; Twps. of Lynchburg, Bath, Kilburne, Crane Creek, Salt Creek & Mason in Mason County	$10.87	.40	11%+.40		.1 of 1%
Laborers:					
Logan & Menard County (North of Petersburgh) Skilled	8.71	.45	.35		.035
DECISION #KS76-4134 - Mod. #1 (41 FR 32127 - July 30, 1976) Douglas, Jefferson, Leavenworth, Miami and Shawnee Counties, Kansas					
Changes:					
Laborers Zone 1					
Group A	$5.60	.40	.35		.05
Group B	5.75	.40	.35		.05
Group C	5.85	.40	.35		.05
Group D	6.00	.40	.35		.05
Group E	6.10	.40	.35		.05
Power Equipment Operators Zone 3					
Group 1	8.10	.50	1.00	.50	.10
Group 2	7.85	.50	1.00	.50	.10
Group 3	7.60	.50	1.00	.50	.10
Group 4	7.35	.50	1.00	.50	.10
Group 5	7.00	.50	1.00	.50	.10
Group 6	7.10	.50	1.00	.50	.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. MA76-2106- Mod #3 (41 FR 37409- September 3, 1976) Worcester County, Massachusetts					
Change:					
Electricians: Warren	$9.60	.50	1%+.30	.43	.02+a
Piledrivermen	10.15	.60	1.00		
Plumbers:					
Ashburnham, Athol, Bolton, Fitchburg, Garden, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Royalston, Templeton, Westminster, Winchendon	10.02	.60	.45	.40	.05
Decision # MS76-1020 - Mod. # 4 (41 FR-4780 - January 30, 1976) Hancock, Harrison, Jackson, and Pearl River Counties, Mississippi.					
Change:					
Modification published December 17, 1976 should be mod. # 3.					
Painters (Hancock and Pearl River Counties):					
Brush and roller	5.55				.03
Spray	6.55				.03
Painters (Harrison and Jackson Counties):					
Commercial:					
Brush	6.85		.20		.12
Roller	6.95		.20		.12
Spray and sandblast	7.70		.20		.12
Industrial:					
Brush	7.60		.20		.12
Spray and sand blast	8.90		.20		.12
Delete:					
Glaziers	5.00				.03
Decision No. MS76-1137 - Mod. 1 (41 FR 55271 - December 17, 1976) Statewide, Mississippi.					
Change:					
This decision supersedes decision #MS75-1114.					

DECISION NO. MT76-5099 - Mod. #2 (41 FR 47789 - October 29, 1976) Statewide, Montana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
SHEET METAL WORKERS:					
Broadwater, Jefferson (including north half of the City of Boulder), Lewis and Clark and Meagher Counties	$9.81	.77	.25		.10
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	9.75	.82	.25		.10
DECISION NO. MT76-5100 - Mod. #2 (41 FR 47798 - October 29, 1976) Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow and Valley Counties, Montana					
Change:					
Sheet Metal Workers:					
Missoula County	$9.75	.82	.23		.10

DECISION NO. MT76-5103 - Mod. #2
(41 FR 51326 - November 19, 1976)
Statewide, Montana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Granite (area lying north of a line running due east from the N.W. corner of Granite County to the N.E. corner of Granite County) Lake (southern area, south of and including the Town of Ravalli), Mineral (area southeast of Southeast City limits of the Town of Superior), Missoula, Powell (area lying north of the N.E. corner of Granite County), Ravalli and Sander (Southeastern portion) Counties					
Carpenters	$8.01	.45	.75		.02
Millwrights; Piledrivermen	8.26	.45	.75		.02
Broadwater, Lewis and Clark and Jefferson Counties					
Carpenters	8.27	.45	.75		.02
Millwright	8.52	.45	.75		.02
Piledrivermen	8.42	.45	.75		.02
Sheet Metal Workers:					
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	9.73	.82	.25		.10
Broadwater, Jefferson (including North half of the City of Boulder), Lewis and Clark and Meagher Counties	9.81	.77	.25		.10

DECISION #NV77-5004 - Mod. #1
(42 FR - January 4, 1977)
Statewide (excluding the Nevada Test Site and Tonopah Test Range), Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers; Stonemasons:					
Clark, Esmeralda, Lincoln, Nye County (south of Hwy. #6)	$11.37	.70	.60		.06
Ironworkers:					
Remaining Counties:					
Fence Erector	10.41	1.14	1.86	1.20	.04
Ornamental; Reinforcing; Structural	11.30	1.14	1.86	1.20	.04
Line Construction Workers:					
Clark, Lincoln, Nye County (south half):					
Line Equipment Operator	13.73	.73	1%		.35
Cable Splicers	5%overJR	.73	1%		.35
Plumbers; Steamfitters:					
Remaining Counties and Nye County (north half)	10.84	.73	.80	1.95	.08
Power Equipment Operators:					
(Except Piledriving and Steel Erection)					
Clark, Esmeralda, Lincoln, Nye Counties:					
Group 1	9.95	.95	2.00	.50	.04
Group 2	10.23	.95	2.00	.50	.04
Group 3	10.52	.95	2.00	.50	.04
Group 4	10.66	.95	2.00	.50	.04
Group 5	10.88	.95	2.00	.50	.04
Group 6	10.99	.95	2.00	.50	.04
Group 7	11.11	.95	2.00	.50	.04
Group 8	11.28	.95	2.00	.50	.04
Group 9	11.41	.95	2.00	.50	.04

DECISION #NV77-5004 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change (Cont'd):					
Soft Floor Layers: Clark, Esmeralda, Lincoln, Nye Counties	$12.52	.40			.15
Terrazzo Workers; Tile Setters: Clark, Esmeralda, Lincoln, Nye County (south half)	11.37	.70	.60		
DECISION #NV76-5080 - Mod. #3 (41 FR 35384 - August 20, 1976) Nevada Test Site including Tonopah Test Range in Clark and Nye Counties, Nevada					
Change:					
Bricklayers	$11.37	.70	.60		.06
Ironworkers: Reinforcing; Ornamental; Structural	11.30	1.14	1.86	1.20	.04
DECISION #NV76-5114 - Mod. #2 (41 FR 54133 - December 10, 1976) Clark County (excluding the Nevada Test Site), Nevada					
Change:					
Bricklayers; Stonemasons	$11.37	.70	.60		.06
Ironworkers: Fence Erectors	10.41	1.14	1.86	1.20	.04
Ornamental; Reinforcing; Structural	11.30	1.14	1.86	1.20	.04
Marble Masons; Terrazzo Workers; Tile Setters	11.37	.70	.60		.06
Power Equipment Operators: (Except Piledriving and Steel Erection)					
Group 1	9.95	.95	2.00	.50	.04
Group 2	10.23	.95	2.00	.50	.04
Group 3	10.52	.95	2.00	.50	.04
Group 4	10.66	.95	2.00	.50	.04
Group 5	10.88	.95	2.00	.50	.04
Group 6	10.99	.95	2.00	.50	.04
Group 7	11.11	.95	2.00	.50	.04
Group 8	11.28	.95	2.00	.50	.04
Group 9	11.41	.95	2.00	.50	.04
Soft Floor Layers	12.52	.40			.15

DECISION NO. OK76-4137 - Mod. #3
(41 FR 32180 - July 30, 1976)
McIntosh County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$10.00	.50	1.00		.02
BRICKLAYERS	9.25	.45	.40		.05
ELECTRICIANS:					
ZONE I					
Electricians	9.93	.40	1%		1/2%
Cable splicers	10.33	.40	1%		1/2%
ZONE II					
Electricians	10.23	.40	1%		1/2%
Cable splicers	10.63	.40	1%	1/2%	
ELEVATOR CONSTRUCTORS	9.66	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS HELPER	70%JR	.545	.35	4%+a+b	.02
IRONWORKERS	9.60	.45	.65		.12
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
TERRAZZO WORKERS	9.29		.30		
TERRAZZO WORKER HELPER	7.70				
TERRAZZO WORKER FLOOR MACHINE OP.	7.80				
TERRAZZO WORKERS BASE MACHINE OP.	8.00				
TILE LAYERS	9.29		.30		
TRUCK DRIVERS:					
Group 1	8.03				
Group 2	8.13				
Group 3	8.23				
Group 4	8.18				
Group 5	8.33				

DECISION NO. OK76-4139 - Mod. #3
(41 FR 32184 - July 30, 1976)
Muskogee, Adair and Cherokee Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$ 10.00	.50	1.00		.02
BRICKLAYERS-Stonemasons	9.36	.45	.40		.04
ELECTRICIANS:					
Zone I					
Electricians	9.93	.40	1%		1/2%
Cable splicers	10.33	.40	1%		1/2%
ZONE II					
Electricians	10.23	.40	1%		1/2%
Cable splicers	10.63	.40	1%		1/2%
IRONWORKERS	9.60	.45	.65		.12
POWER EQUIPMENT OPERATORS:					
Group 1	10.10	.45	.50		.12
Group 2	9.85	.45	.50		.12
Group 3	9.60	.45	.50		.12
Group 4	9.35	.45	.50		.12
Group 5	9.10	.45	.50		.12
Group 6	8.85	.45	.50		.12
Group 7	8.45	.45	.50		.12
Group 8	8.35	.45	.50		.12
Group 9	8.15	.45	.50		.12
Group 10	7.85	.45	.50		.12
TERRAZZO WORKERS	9.29		.30		
TERRAZZO WORKERS HELPERS	7.70				
TERRAZZO WORKERS' HELPER FLOOR GR.	7.80				
TERRAZZO WORKERS' helper base machine operator	8.00				
TILE LAYERS	9.29		.30		
TRUCK DRIVERS:					
Group 1	8.03				
Group 2	8.13				
Group 3	8.23				
Group 4	8.18				
Group 5	8.33				

DECISION NO. OK76-4186 - Mod. #1
(41 FR 51359 - November 19, 1976)
Tulsa, Creek, Craig, Ottawa, Delaware, Mayes and Rogers Counties, Oklahoma.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$ 10.00	.35	.60		.015
BRICKLAYERS-Stonemasons:					
Tulsa, Delaware, Ottawa, Craig and Rogers Counties	9.74	.30	.40	.33	.06
CARPENTERS - Area I	8.78	.35	.65		.05
MILLWRIGHTS-Piledrivermen-Zone I	9.08	.35	.65		.05
CEMENT MASONS:					
Cement masons	9.28		.40		.06
Power tool operator	9.53		.40		.06
ELECTRICIANS:					
Electricians	9.65	.46	1%+.40	.30	.07
Cable splicers	9.90	.46	1%+.40	.30	.07
IRONWORKERS	9.60	.45	.65		.12
PAINTERS (TULSA, Creek, Rogers and Mayes Counties):					
Brush	8.55		.40	.85	.02
Highwork and stage	8.95		.40	.85	.02
Spray and sandblasting	8.95		.40	.85	.02
Hot or bituminous	9.85		.40	.85	.02
Sheetrock handtools	8.55		.40	.85	.02
Sheetrock power tools	8.90		.40	.85	.02
Hazardous work	10.75		.40	.85	.02
PLASTERERS	9.15				.01
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
TERRAZZO WORKERS	9.29		.30		
TERRAZZO WORKERS' & tile layers helper	7.70				
TERRAZZO WORKERS' helpers floor machine operator	7.80				
TERRAZZO WORKERS' Helpers base machine operator	8.00				
TILE LAYERS	9.29		.30		
BRICKLAYERS (MAYES COUNTY)	9.36	.45	.40		.04

MODIFICATIONS P. 15

DECISION NO. OK76-4189 - Mod. #1
(41 FR 52278 - November 26, 1976)
Wagoner County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$10.00	.50	1.00		.02
BRICKLAYERS	9.36	.45	.40		.04
IRONWORKERS	9.60	.45	.65		.12
ELECTRICIANS:					
ZONE I					
Electricians	9.93	.40	1%		1/2%
Cable splicers	10.33	.40	1%		1/2%
ZONE II					
Electricians	10.23	.40	1%		1/2%
Cable splicers	10.63	.40	1%		1/2%
ZONE III					
Electricians	9.65	.46	1%+.40	.30	.07
Cable splicers	9.90	.46	1%+.40	.30	.07
CEMENT MASONS - Zone I	9.28		.40		
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
TRUCK DRIVERS:					
Group 1	8.03				
Group 2	8.13				
Group 3	8.23				
Group 4	8.18				
Group 5	8.33				

MODIFICATIONS P. 16

DECISION NO. VT76-2170- Mod #1
(41 FR 54146- December 10, 1976)
Statewide Vermont, except Rutland County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Piledrivermen: Rupert, Dorset, Winhall, Londonderry, Jamaica, Wardsboro, Dover, Wilmington, Readsboro, Stamford, Pownal, Bennington, Shaftsbury, Arlington, and Sandgate	$6.71	.40	.50		

DECISION #3877-5005 - Mod. #1
(42 FR -January 4, 1977)
Georgia, North Carolina, South Carolina, Virginia and Washington, D. C.

Omit:
The State of Maryland in the "States"

STATE: Florida COUNTIES: *See below
DECISION NUMBER: FL77-1004 DATE: Date of Publication
Supersedeas Decision No. : FL76-1018 dated January 23, 1976 in 41 FR-3590
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

*Counties: Gadsden, Jefferson, & Leon.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	4.63				
Bricklayers	6.55				
Carpenters	4.69				
Cement masons	3.25				
Drywall hangers	6.00				
Electricians	5.00				
Insulators	3.37				
Ironworkers	8.15				
Laborers:					
Plasterers tenders	3.00				
Unskilled	2.95				
Lathers	6.95				
Painters	4.30				
Plasterers	6.25				
Plumbers and pipefitters	6.00				
Roofers	4.00				
Sheet metal workers	4.00				
Soft floor layers	4.50				
Tile setters	6.00				
Truck drivers	2.95				
POWER EQUIPMENT OPERATORS:					
Backhoe	4.75				

SUPERSEDEAS DECISION

STATE: Maryland

COUNTIES: Baltimore, Harford, Howard and Baltimore City

DECISION NO.: MD77-3017

DATE: Date of Publication

Supersedes Decision No. MD76-3272 dated November 12, 1976 in 41 FR 50147

DESCRIPTION OF WORK: Building Construction (excluding single family houses and garden type apartments up to and including 4-stories), Heavy Construction (excluding sewer and water lines and Baltimore Region Rapid Transit System)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 8.95	.70	.85		.02
BOILERMAKERS	9.40	.60	.90		.02
BRICKLAYERS	9.95	.70	.50		.07
CARPENTERS	9.80	.75	.69		.05
CEMENT MASONS	10.02	.60	.55		
ELECTRICIANS:					
Zone 1 - From Baltimore City Hall to 25 Miles	10.20	.60	1%+.80		4%
Zone 2 - Over 25 Miles to 45 Miles from Baltimore City Hall	10.45	.60	1%+.80		4%
Zone 3 - Over 45 Miles from Baltimore City Hall	10.70	.60	1%+.80		4%
ELEVATOR CONSTRUCTORS	10.415	.545	.35	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.29	.545	.35	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROBATIONARY)	5.21				
GLAZIERS:					
Glaziers	7.90	.25	.40		
Swinging Scaffold or Bosun's Chair	8.15	.25	.40		
IRONWORKERS:					
Ironworkers, finishers, rodmen, pre-cast & pre-stress erectors	9.77	.80	1.53		.06
Sheeters	10.02	.80	1.53		.06
Fence erectors	9.42	.80	1.53		.06
LABORERS, BUILDING					
Laborers	7.00	.30	.50		.075
Hod Carriers	7.40	.30	.50		.075
Plasterers' Laborers	7.15	.30	.50		.075
Power Tool Operators	7.10	.30	.50		.075
Pipelayers (concrete & clay)	7.20	.30	.50		.075
Wagon Drill Operators	7.25	.30	.50		.075
Mason Tenders	7.30	.30	.50		.075
Scaffold Builders	7.50	.30	.50		.075
LABORERS, HEAVY					
Laborers	6.10	.30	.50		.075
Power Tool Operators	6.20	.30	.50		.075
Pipelayers, wagon drill operators, air track drillers, burners (demolition	6.60	.30	.50		.075

DECISION NO. MD77-3017

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$ 9.59		.35	h	.01
LEAD BURNERS	10.75	.40	.25	c	.01
LINEMEN & CABLE SPLICERS:					
Zone 1 - From Baltimore City Hall to 25 Miles	11.15	.45	1%		3%
Zone 2 - Over 25 Miles to 45 Miles from Baltimore City Hall	11.40	.45	1%		3%
Zone 3 - Over 45 Miles from Baltimore City Hall	11.65	.45	1%		3%
MARBLE SETTERS	10.15	.40	.50		.07
MARBLE, TILE & TERRAZZO WORKERS' FINISHERS	6.625	.35	.20		
MILLWRIGHTS	9.90	.75	.69		.05
PAINTERS:					
Brush	9.20	.85	.50		.06
Structural Steel, Spray (Steel), Steamcleaning & Sandblasting	9.70	.85	.50		.06
Spackling, Taping & Wall Coverings	9.35	.85	.50		.06
PILEDRIVERMEN	9.80	.75	.69		.05
PLASTERERS	8.95	.60	.40	h	
PLUMBERS	10.93	.50	.45		.10
ROOFERS:					
Roofers, Damp & Waterproof Workers	7.90	.35	.40		.05
Slate, Tile, Asbestos & Asphalt Shingle	8.35	.35	.40		.05
Precast Slab & Woodblock Layer	8.90	.35	.40		.05
SHEET METAL WORKERS	10.12	.75	.70		.05
SOFT FLOOR LAYERS - Resilient Floor Layers	9.80	.75	.69		.05
SPRINKLER FITTERS:					
Baltimore City including a 10-mile radius beyond the City Limits	10.80	.60	.90		.10
Harford & Howard Counties and the remainder of Baltimore County	11.06	.60	.90		.08

DECISION NO. MDTT-3017

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
STEAMFITTERS	$10.93	.45	.60		.12
STONE MASONS	9.80	.40	.75		.07
TILE & TERRAZZO WORKERS	8.11	.70	.50		.04
TRUCK DRIVERS:					
Goose-necks, drop frame trailers	9.20	.80	.60	d+e	
All "A" Frames, winch trucks, fork lifts & trailers	9.00	.80	.60	d+e	
Flat beds & pick-ups	8.00	.80	.60	d+e	
Euclid wagons & dumpsters	8.05	.80	.60	d+e	
Dump trucks	7.74	.80	.60	d+e	
TRUCK DRIVERS (Excavation):					
Dump truck	7.74	.80	.60	f+g	
Euclid Wagons & Dumpsters	8.05	.80	.60	f+g	
Drop-Frame, Goose-Neck & Trailers	7.94	.80	.60	f+g	
Pick-Ups	7.56	.80	.60	f+g	
Welders - receive rates prescribed for craft performing operation to which welding is incidental.					

DECISION NO. MDTT-3017

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F- Christmas Day.

FOOTNOTES:

a. Holidays: A through F.
b. Employer contributes 4% of basic hourly rate for 5 years or more of service as vacation pay credit.
c. Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve (provided employee has worked at least 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceding and following the holiday).
d. Employee with 1 year of service - 1 week's paid vacation; 2 years of service - 2 weeks paid vacation; 10 years of service - 3 weeks paid vacation, provided the employee has worked 125 days in the previous contract year.
e. Holidays: A through F plus the employee's birthday; the day after Thanksgiving Day and Christmas Eve (provided the employee has worked one day and has been available for work during holiday week).
f. Employee with 1 year of service - 1 week's paid vacation; 2 years of service - 2 weeks paid vacation; 10 years of service - 3 weeks paid vacation, provided employee has worked 100 days in the contract year.
g. Holidays A through F plus the employee' birthday, Good Friday and Christmas Eve (providing the employee has worked one day and has been available for work during the holiday week).

h. Employer working Christmas Eve shall work 4 hours and receive 8 hours pay.

DECISION NO. MD77-3017

POWER EQUIPMENT OPERATORS
Building and Heavy Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Group 1	$10.35	.75	.75	a	.10
Group 2:	9.85	.75	.75	a	.10
Group 3	9.30	.75	.75	a	.10
Group 4	8.85	.75	.75	a	.10
Group 5	7.85	.75	.75	a	.10
Group 6:					
a	10.25	.75	.75	a	.10
b	10.45	.75	.75	a	.10
c	10.65	.75	.75	a	.10
d	10.85	.75	.75	a	.10
e	11.10	.75	.75	a	.10

FOOTNOTE:
a. Paid Holidays - New Year's Day; A-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

Group 1: Operators handling or setting steel, stone, prestressed concrete or machinery. Tower Cranes.

Group 2: Backfiller, backhoe, batching plants, boat captain, cableway, Case type hoe (with a front end bucket over 1¼ yds.), concrete mixing plants, concrete paver, derrick boat, double concrete pump, dragline, Eimco type overhead loader, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds. and over), gradall, grader, hoist (2 active drums or more), multiple conveyor, pile driving machine, power shovel, repair mechanic, shield, standard gauge locomotive, trenching machine, tunnel mucking machine, twin engine scraper, welder, whirley rig.

Group 3: Asphalt spreader, bulldozer, bull float, crane type backhoe (with a front end bucket 1¼ yds. and under), concrete mixer (with skip), Concrete pump, concrete spreader, excavating scoop (under 25 yds.), finishing machine, front end tractor loader (under 1-3/4 yds.), Hi-lift fork lift, longitudinal float, narrow gauge locomotive, one drum hoist, power roller, screeding machine, stone crusher, stone sprader, sub-grader, tractor with attachments (2 or more provided both attachments are being used.

DECISION NO. MD77-3017

POWER EQUIPMENT OPERATORS
(Building and Heavy Construction)

Group 4: Caterpillar type tractor, compressors, elevator operator, Firemen, fuel truck, grease truck, grout pump, light plant, mighty midget with compressor, single conveyor, space heaters, welding machines, well-drill, well point system.

Group 5: Deck hands, oilers (all types)

Group 6: Long boom cranes, including jibs and on piledriver machines with leads: when working with piledrivermen or ironworker

Group 6a: 130' to 169'

Group 6b: 170' to 209'

Group 6c: 210' to 249'

Group 6d: 250' to 299'

Group 6e: 300' and over

SUPERSEDEAS DECISION

STATE: Maryland LOCATION: Baltimore City
DECISION NO.: MD77-3018 DATE: Date of Publication
Supersedes Decision No.: MD76-3273 dated November 12, 1976 in 41 FR 50150
DESCRIPTION OF WORK: Highway Construction (excluding bridge construction)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 9.80	.75	.69		.05
Cement Masons	10.02	.60	.55		
Electricians	10.20	.60	1⅝+.80		¼
Ironworkers:					
Structural & reinforcing	9.77	.80	1.53		.06
Fence erectors	9.42	.80	1.53		.06
Laborers	6.10	.30	.50		.075
Truck Drivers:					
Pickups	6.85	.80	.60	a+b	
Dumps	7.03	.80	.60	a+b	
Drop-frame, gooseneck, trailer driver	7.23	.80	.60	a+b	
Euclids & dumpsters	7.34	.80	.60	a+b	

FOOTNOTES:

a. 9-paid holidays: New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day and Employee's Birthday, providing employee has worked one day and was available for work during the holiday week.

b. Employees who has worked 100 days in the previous contract year and have 1 year of service, 1 week's paid vacation: 2 years of service, 2 weeks paid vacation; 10 years of service, 3 weeks paid vacation.

DECISION NO. MD77-3018

POWER EQUIPMENT OPERATORS: HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 9.07	.75	.75	a	.10
GROUP II	8.57	.75	.75	a	.10
GROUP III	8.07	.75	.75	a	.10
GROUP IV	7.07	.75	.75	a	.10
GROUP V					
a	9.47	.75	.75	a	.10
b	9.67	.75	.75	a	.10
c	9.87	.75	.75	a	.10
d	10.07	.75	.75	a	.10
e	10.32	.75	.75	a	.10

FOOTNOTE:

a. Paid Holidays, New Year's Day; Memorial; Independence Day; Labor Day; Thanksgiving Day and Christmas Day provided the employee works three days in the work week in which the holiday occurs.

POWER EQUIPMENT OPERATORS: HIGHWAY CONSTRUCTION

Group I - Backfiller, backhoe, batching plants, cableway, Case type hoe (with a front end bucket over 1-¼ yds.), concrete mixing plants, concrete paver, derrick, derrick boat, double concrete pump, dragline, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds and over), grader, gradall, hoist (2 active drums or more), pile driving machine, power crane, power shovel, repair mechanic, standard guage locomotive, trenching machine, tunnel mucking machine, twin engine scoop, welder, whirley rig.

Group II - Asphalt spreader, bulldozer, bull float, Case type hoe (with a front end bucket 1-¼ yds. and under), concrete mixer (with a slip), concrete pump, concrete spreader, ditch-witch type trencher, excavating scoop (under 25 yds.), finishing machine, front end loader (under 1-3/4 yds.), grout pump, hi-lift, longitudinal float, narrow-guage locomotive, one drum hoist, power roller, screeding machine, stone crusher, stone spreader, tractor with attachments (2 or more provided both attachments are being used), subgrader, well-drill.

Group III - Compressors, conveyors, firemen, fueltruck, grease truck, light plants, mighty midget with compressor, space heaters, welding machines wellpoint system

DECISION NO. MDTT-3018

POWER EQUIPMENT OPERATORS: HIGHWAY CONSTRUCTION (Cont'd)

Group IV - Oilers (all types)

Group V - Long boom cranes, including jibs, and on piledriver machines with leads:
a. 130 Ft. to 169 Ft.
b. 170 Ft. to 209 Ft.
c. 210 Ft. to 249 Ft.
d. 250 Ft. to 299 Ft.
e. 300 Ft. and over

SUPERSEDEAS DECISION

STATE: MARYLAND COUNTY: ANNE ARUNDEL
DECISION NO.: MD77-3019 DATE: DATE OF PUBLICATION
Supersedes Decision No. MD76-3274 dated November 12, 1976 in 41 FR 50152
DESCRIPTION OF WORK: BUILDING CONSTRUCTION (excluding single family houses and garden type apartments up to and including 4-stories) and Heavy Construction (excluding sewer and water lines).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 8.95	.70	.85		.02
BOILERMAKERS	9.40	.60	.90		.02
BRICKLAYERS:					
From Laurel to Bodkin Point incl., Ft. Meade but excluding the D. C. Training School	9.95	.70	.50		.07
Reminder of County	10.90	.75	.65	f	.10
CARPENTERS:					
All areas north of a line starting at Priest Bridge and continuing northeast to Benfield, Pasadena, ARminger and fort Smallwood	9.80	.75	.69		.05
Reminder of County	10.00	.65	.53		.07
CEMENT MASONS:					
North of and including Benfield, Arminger and Pasadena but excluding the D. C. Training School	10.02	.60	.55		
The D. C. Training School	10.04	.685	.50		.11
Remainder of County	8.95	.25		f	
ELECTRICIANS	10.20	.60	1%+.80		4%
ELEVATOR CONSTRUCTORS	10.415	.545	.35	3%+a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.29	.545	.35	3%+a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROBATIONARY)	5.21				
GLAZIERS:					
Glaziers	7.90	.25	.40		
Swing scaffold or bosun chair	8.15	.25	.40		
IRONWORKERS:					
Structural, ornamental, rodmen, finishers, pre-cast & prestress erectors	9.77	.80	1.53		.06
Sheeters	10.02	.80	1.53		.06
LABORERS, BUILDING:					
Unskilled	7.00	.30	.50		.075
Hod carriers, gunnite nozzle	7.40	.30	.50		.075
Plasterers' laborers	7.15	.30	.50		.075
Power tool operator	7.10	.30	.50		.075
Pipelayers (concrete & clay)	7.20	.30	.50		.075
Wagon Drill Operator	7.15	.30	.50		.075
Mason TEnders	7.25	.30	.50		.075
Scaffold builders and burners (demolition)	7.50	.30	.50		.075

DECISION NO. MD77-3019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS, HEAVY:					
Laborers	6.10	.30	.50		.075
Power tool operator	6.20	.30	.50		.075
Pipelayers, Wagon Drill Operator Air Track Driller, Burners (Demolition)	6.60	.30	.50		.075
LATHERS	9.59		.35	i	.01
LEAD BURNERS	10.75	.40	.25	e	.01
LINE CONSTRUCTION:					
Linemen, Cable Splicers	11.15	.45	1%		4%
Groundmen (experienced)	7.02	.45	1%		4%
MARBLE SETTERS:					
From Laurel to Bodkin Point incl., Ft. Meade but excluding the D. C. Training School	10.15	.40	.50		.07
Remainder of County	8.95	.25		f	
MILLWRIGHTS:					
All areas north of a line strating at Priest Bridge & continuing northeast to Benfield, Pasadena, Arminger & Ft. Smallwood	9.90	.75	.69		.05
Remainder of County	10.46	.65	.53		.07
PAINTERS:					
Brush	9.20	.85	.50		.06
Structural steel, spray (steel), steamcleaning & sandblasting	9.70	.85	.50		.06
Spacking, taping & wall coverings	9.35	.85	.50		.06
Spray (except steel)	9.45	.85	.50		.06
PILEDRIVERMEN:					
All areas north of a line starting At Priest Bridge and continuing northeast to Benfield Pasadena, Arminger and Fort Smallwood	9.80	.75	.69		.05
Remainder of County	10.21	.65	.53		.07

Page 3

DECISION NO. MDTT-3019	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
The D. C. Training School	$10.15	.55	.65		.06
Remainder of County	8.95	.60	.40	f	
PLUMBERS	10.93	.50	.45		.10
ROOFERS:					
Roofers, damp & waterproofers	7.90	.35	.40		.05
Slate, tile, asbestos & asphalt	8.35	.35	.40		.05
Precast & wood block	8.90	.35	.40		.05
SHEET METAL WORKERS	10.12	.75	.70		.05
SOFT FLOOR LAYERS:					
All areas north of a line starting at Priest Bridge & continuing northeast to Benfield, Pasadena, Arminger and Fort Smallwood	9.80	.75	.69		.05
Remainder of County	9.55	.50	.49		.07
SPRINKLER FITTERS	11.06	.60	.90		.08
STEAMFITTERS	10.93	.45	.60		.12
STONE MASONS:					
From Bodkin Point including Fort Meade but excluding the D. C. Training School	9.80	.40	.75		.07
Remainder of County	8.95	.25		f	
TERRAZZO WORKERS:					
Northern part of County from Laurel to Bodkin Point incl., Ft. Meade but excluding the D. C. Training School	8.11	.70	.50		.04
The D. C. Training School	10.78	.50	.40		
Reminder of County	8.95	.25		f	
TERRAZZO WORKERS FINISHERS:					
The D. C. Training School	8.05	.40	.40		
Remainder of County	6.625	.35	.20		
TILE SETTERS:					
Northern part of County from Laurel to Bodkin Point incl., Ft. Meade but excluding the D. C. Training School	8.11	.70	.50		.04
The D. C. Training School	10.78	.50	.40		
Remainder of County	8.95	.25		f	

Page 4

DECISION NO. MDTT-3019	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TILE SETTERS FINISHERS:					
The D. C. Training School	$ 8.05	.40	.40		
Remainder of County	6.625	.35	.20		
TRUCK DRIVERS:					
Goose-necks, drop frame trailers	9.20	.80	.60	d+e	
All A-Frame, winch trucks, fork lifts and trailers	9.00	.80	.60	d+e	
Flat beds and pick-ups	8.00	.80	.60	d+e	
Helpers	7.65	.80	.60	d+e	
Mixers with agitator of 12 yds., capacity	7.65	.80	.60	d+e	

DECISION NO. MDTT-3019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers (cont'd):					
Mixers with agitator over 12 yds., capacity	8.08	.80	.60	d+e	
Euclid wagons and dumpsters	8.05	.80	.60	d+e	
Dump trucks	7.74	.80	.60	d+e	
Truck Drivers (Excavation):					
Dump trucks	7.74	.80	.60	d+h	
Euclids wagon and dumpster	8.05	.80	.60	d+h	
Drop frame, goose neck & trailer	7.94	.80	.60	d+h	
Pick-up	7.56	.80	.60	d+h	
Helpers	7.61	.80	.60	d+h	
Welders - receive rates prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS (Where Applicable):
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas DAy.

FOOTNOTES:
a. Holidays: A through F.
b. Employer contributes 4% of basic hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.
c. Holidays: A through F plus Washington's Birthday, Good Friday and Christmas Eve, provided employee has worked at least 10 full days during the 90 caalendar days prior to the holiday and the regular scheduled work days immediately preceding and following the holiday.
d. Employee with one yar of service - 1 week's paid vacation; 2 years of service - 2 weeks paid vacation; 10 years of service - 3 weeks paid vacation, provided the employee has worked 125 days in the previous contract year.
e. Holidays: A through F plus the employee's birthday, the day after Thanksgiving and Christmas Eve, provided the employee has worked one day and has been available for work during the holiday week.
f. Employees working X-Mas Eve shall work 4 hours and receive 8 hours pay.
g. Employee with 1 year of service - 1 week's paid vacation; 2 years of service - 2 weeks paid vacation; 10 years of service - 3 weeks paid vacation, provided the employee has worked 100 days in the contract year.
h. Holidays: A through F plus Good Friday, Employee's birthday and Christmas Eve, provided the employee has worked one day and was available for work during the holiday week.
i. EMployee working Christmas Eve shall worked 4 hours and receive 8 hour pay.

DECISION NO. MDTT-3019

POWER EQUIPMENT OPERATORS Building and Heavy Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Group 1	$10.35	.75	.75	a	.10
Group 2:	9.85	.75	.75	a	.10
Group 3	9.30	.75	.75	a	.10
Group 4	8.85	.75	.75	a	.10
Group 5	7.85	.75	.75	a	.10
Group 6:					
a	10.25	.75	.75	a	.10
b	10.45	.75	.75	a	.10
c	10.65	.75	.75	a	.10
d	10.85	.75	.75	a	.10
e	11.10	.75	.75	a	.10

FOOTNOTE:
a. Paid Holidays - New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

Group 1: Operators handling or setting steel, stone, prestressed concrete or machinery. Tower Cranes.

Group 2: Backfiller, backhoe, batching plants, boat captain, cableway, Case type hoe (with a front end bucket over 1¼ yds.), concrete mixing plants, concrete paver, derrick boat, double concrete pump, dragline, Eimco type overhead loader, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds. and over), gradall, grader, hoist (2 active drums or more), multiple conveyor, pile driving machine, power shovel, repair mechanic, shield, standard gauge locomotive, trenching machine, tunnel mucking machine, twin engine scraper, welder, whirley rig.

Group 3: Asphalt spreader, bulldozer, bull float, crane type backhoe (with a front end bucket 1¼ yds. and under), concrete mixer (with skip), Concrete pump, concrete spreader, excavating scoop (under 25 yds.), finishing machine, front end tractor loader (under 1-3/4 yds.), Hi-lift fork lift, longitudinal float, narrow gauge locomotive, one drum hoist, power roller, screeding machine, stone crusher, stone sprader, sub-grader, tractor with attachments (2 or more provided both attachments are being used.

DECISION NO. MT77-3019

POWER EQUIPMENT OPERATORS
(Building and Heavy Construction)

Group 4: Caterpillar type tractor, compressors, elevator operator, Firemen, fuel truck, grease truck, grout pump, light plant, mighty midget with compressor, single conveyor, space heaters, welding machines, well-drill, well point system.

Group 5: Deck hands, oilers (all types)

Group 6: Long boom cranes, including jibs and on piledriver machines with leads: when working with piledriverman or ironworker

Group 6a: 130' to 169'

Group 6b: 170' to 209'

Group 6c: 210' to 249'

Group 6d: 250' to 299'

Group 6e: 300' and over

SUPERSEDEAS DECISION

STATE: Maryland COUNTIES: Allegany And Garrett

DECISION NO.: MD77-3020 DATE: Date of Publication

Supersedeas Decision No. MD76-3275 dated November 12, 1976 in 41 FR 50156

DESCRIPTION OF WORK: Building Construction (excluding single family houses and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$ 11.10	.60	.70		
Boilermakers	9.40	.60	.90		.02
Bricklayers	9.79		.40		
Carpenters	9.90	.45	.25		.02
Cement Masons	10.04	.45			
Electricians:					
Allegany County	10.15	.50	1%+.25		1%
Garrett County	10.55	.50	1%+.25		1%
Elevator Constructors	11.185	.545	.35	4%+a+b	.02
Elevator Constructors' Helpers	7.83	.545	.35	4%+a+b	.02
Elevator Constructors' Helpers (probationary)	5.59				
Ironworkers:					
Structural, Ornamental and Reinforcing	9.84	.60	.90		
Laborers:					
Unskilled, landscape worker	7.11	.40	.60		
Power tool oper., mason & plasterer tender, mortar mixer (by hand), scaffold builder, hod carrier, concrete puddler, rammer & pipelayer	7.25	.40	.60		
Mortar mixer (machine)	7.31	.40	.60		
Blaster-dynamite, wagon drill (air track)	7.45	.40	.60		
Lathers	9.25		.35		.01
Linemen - Allegany County:					
Linemen	10.15	.50	1%+.25		1%
Equipment Operator	9.64	.50	1%+.25		1%
Truck driver, groundmen (experienced)	6.60	.50	1%+.25		1%
Groundman (1st year)	4.06	.50	1%+.25		1%
Linemen - Garrett County:					
Linemen	10.55	.50	1%+.25		1%
Equipment Operator	10.04	.50	1%+.25		1%
Truck driver, groundmen (experienced)	7.00	.50	1%+.25		1%
Groundmen (1st year)	4.46	.50	1%+.25		1%
Marble Masons			.40		
Millwrights	10.26	.45	.25		.02

DECISION NO. MD77-3020

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Brush, rollers, wall covering hangers	$ 7.70		.25		
Spray & Sandblasting	8.20		.25		
Piledrivermen	10.20	.45	.25		.02
Plasterers	10.04	.45			
Plumbers & Steamfitters	8.70	.50	.50	1.00	.05
Roofers:					
Composition	8.50	.45	.40		
Mopmen - composition	8.75	.45	.40		
Helpers - composition (1st year)	3.50	.45	.40		
Helpers - composition (2 year)	5.60	.45	.40		
Slaters	8.65	.45	.40		
Sheet Metal Workers	10.20		.25	1.25	.02
Sprinkler Fitters	11.06	.60	.90		.08
Stone Masons	9.79		.40		
Terrazzo Workers	9.79		.40		
Tile Setters	9.79		.40		

FOOTNOTES:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

b. Employer contributes 4% of basic hourly rate for 5 years of service or more and 2% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

DECISION NO. MDTT-3020

BUILDING CONSTRUCTION

1-MD-PED-1-I

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments H & W	Pension	Vacation	App. Tr.
GROUP 1	$ 9.38	.75	.75		.10
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:					
130' to 169' plus $ .40					
170' to 209' " .60					
210' to 249' " .80					
250' to 299' 1.00					
300' and over 1.25					
GROUP 2	8.95	.75	.75		.10
GROUP 3	8.61	.75	.75		.10
GROUP 4	8.37	.75	.75		.10
GROUP 5	8.25	.75	.75		.10
GROUP 6	7.90	.75	.75		.10
GROUP 7	9.78	.75	.75		.10

CLASSIFICATIONS

GROUP 1 - Backfiller, backhoe, concrete mixing plants, batching plants, cable way, derrick, derrick boat, dragline, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard gauge locomotive, trenching machine, tunnel mucking machine, whirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over 4 welders top scale (more than 6, another man), Zimco type overhead loader, wellpoint system, mighty midget with compressor, twin engine scraper (25 yds. and over), mechanic, mechanic's welder, grader

GROUP 2 - Tractor with attachments (2 or more), Bulldozer

GROUP 3 - Concrete mixer, concrete pump, one drum hoist, narrow gauge locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine driven welders (not exceeding 4), single compressors (over 210 C.F.M.), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, front end loader (up to and including 2 yds.), excavating scoop

GROUP 4 - Finishing machine, bull float, longitudinal float, screeding machine, concrete spreader, sub grader

GROUP 5 - Fireman, truck crane oiler, wheel tractor, grease truck operator

GROUP 6 - Oiler, greaser, mechanic's helper, single compressor (up to 210 C.F.M.)

GROUP 7 - Operators handling or setting steel, stone, prestressed concrete or machinery, Tower Cranes

DECISION NO. MDTT-3020

1-MD-TD-1-A 1 of 1

BUILDING CONSTRUCTION:

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments H & W	Pension	Vacation	App. Tr.
GROUP 1	$ 7.56	.60	.70		
GROUP 2	7.71	.60	.70		
GROUP 3	7.91	.60	.70		
GROUP 4	8.10	.60	.70		
GROUP 5	8.34	.60	.70		

CLASSIFICATIONS

GROUP 1 - Dumpmen and Flagmen

GROUP 2 - Pick-ups, dumps (under 5 yds., capacity), straight trucks

GROUP 3 - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds., capacity), Transit mix, dumps (5 to 9 yd., capacity), flatbody material trucks (straight jobs), greasers, firemen, mechanics' helpers, rubber-tired (towing & pushing flatbody vehicles), form trucks

GROUP 4 - Dump trucks (10 to 15 yd., capacity)

GROUP 5 - Dump trucks (over 15 yd., capacity), bottom and end dump euclids, all other euclid type trucks, turnarockers, ross carriers, athey wagons, A-frames, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumpcretes or batch trucks, specialized earth moving equipment, off-highway tandem back-dump, twin engine equipment and double hitched equipment (where not self-loaded)

SUPERSEDEAS DECISION

STATE: Maryland COUNTIES: Allegany and Garrett
DECISION NO: MD77-3021 DATE: Date of Publication
Supersedes Decision No. MD76-3276 dated November 12, 1976 in 41 FR 50158
DESCRIPTION OF WORK: Heavy and Highway Construction.

HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Bricklayers	$ 9.79		.40		
Carpenters	9.79	.45	.25		.02
Cement masons	9.80	.45			
Electricians - Allegany Co.	10.15	.50	11%+.25		1%
Electricians - Garrett Co.	10.55	.50	11%+.25		1%
Ironworkers:					
Structural & reinforcing	9.84	.60	.90		
Laborers:					
Laborers unskilled & dumpmen	6.99	.40	.60		
Power tool operator, mason & plasterer's tender, mortar mixers by hand, scaffold hldrs. hod carriers, concrete puddler, pipe layers, rammers	7.11	.40	.60		
Mortar mixers by machine	7.18	.40	.60		
Blaster (dynamite), wagon drill	7.29	.40	.60		
Barco tamper	7.25	.40	.60		
Tunnel Workers:					
Caisson, driller, mucker	7.81	.40	.60		
Unskilled laborer	7.45	.40	.60		
Gunnite Workers:					
Nozzleman, gun operator	7.29	.40	.60		
Laborers on scaffold	7.11	.40	.60		
Laborers on ground	6.99	.40	.60		
Piledrivermen	10.08	.45	.25		.02
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. MD77-3021

HEAVY CONSTRUCTION

POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
GROUP 1	$ 9.25	.75	.75	a	.10
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:					
130' to 169' plus $ .40					
170' to 209' " .60					
210' to 249' " .80					
250' to 299' 1.00					
300' and over 1.25					
GROUP 2	8.83	.75	.75	a	.10
GROUP 3	8.49	.75	.75	a	.10
GROUP 4	8.25	.75	.75	a	.10
GROUP 5	8.17	.75	.75	a	.10
GROUP 6	7.78	.75	.75	a	.10
GROUP 7	9.65	.75	.75	a	.10

FOOTNOTE: a. 7 paid holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day.

CLASSIFICATIONS

GROUP 1 - Backfiller, backhoe, concrete mixing plants, batching plants, cable way, derrick, derrick boat, dragline, elevating grader, compressors (2 or more) space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard gauge locomotive, trenching machine, tunnel mucking machine, whirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over 4 welders top scale (more than 6, another man), cinco type overhead loader, wellpoint system, nighty midget with compressor, twin engine scraper (25 yds. and over), mechanic, mechanic's welder, grader
GROUP 2 - Tractor with attachments (2 or more), Bulldoger
GROUP 3 - Concrete mixer, concrete pump, one drum hoist, narrow gauge locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine driven welders (not exceeding 4), single compressors (over 210 c.f.m.), steem hammer, pile extractor, conveyor, stone crusher, hi-lift, front end loader (up to and including 2 yds.), excavating scoop
GROUP 4 - Finishing machine, bull float, longitudinal float, screeding machine, concrete spreader, sub grader
GROUP 5 - Firemen, truck crane oiler, wheel tractor, grease truck operator
GROUP 6 - Oiler, greaser, mechanic's helper, single compressor (up to 210 c.f.m.)
GROUP 7 - Operators handling or setting steel, prestressed concrete or machinery, Tower Crane

DECISION NO. MDTT-3021

HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$ 9.07	.75	.75		.10
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:					
130' to 169' plus $ .40					
170' to 209' " .60					
210' to 249' " .80					
250' to 299' 1.00					
300' and over 1.25					
GROUP 2	8.61	.75	.75		.10
GROUP 3	8.31	.75	.75		.10
GROUP 4	8.08	.75	.75		.10
GROUP 5	7.86	.75	.75		.10
GROUP 6	7.61	.75	.75		.10
GROUP 7	9.47	.75	.75		.10

CLASSIFICATIONS

GROUP 1 - Backfiller, backhoe, concrete mixing plants, batching plants, cable way, derrick, derrick boat, dragline, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard gauge locomotive, trenching machine, tunnel mucking machine, whirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over 4 welders top scale (more than 6 another man), eimco type overhead loader, wellpoint system, mighty midget with compressor, twin engine scraper (25 yds. and over), mechanic, mechanic's welder, grader

GROUP 2 - Tractor with attachments (2 or more), Bulldozer

GROUP 3 - Concrete mixer, concrete pump, one drum hoist, narrow gauge locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine drive welders (not exceeding 4), single compressors (over 210 c.f.m.), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, front end loader (up to and including 2 yds.), excavating scoop

GROUP 4 - Finishing machine, bull float, longitudinal float, screeding machine, concrete spreader, sub grader

GROUP 5 - Firemen, truck crane oiler, wheel tractor, grease truck operator

GROUP 6 - Oiler, greaser, mechanic's helper, single compressor (up to 210 c.f.m.)

GROUP 7 - Operators handling or setting steel, stone, prestressed concrete or machinery, Tower Crane

DECISION NO. MDTT-3021

HEAVY & HIGHWAY CONSTRUCTION

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$ 7.44	.60	.70		
GROUP 2	7.59	.60	.70		
GROUP 3	7.79	.60	.70		
GROUP 4	7.99	.60	.70		
GROUP 5	8.22	.60	.70		

CLASSIFICATIONS

GROUP 1 - Dumpmen and Flagmen

GROUP 2 - Pick-ups, dumps (under 5 yds., capacity), straight trucks

GROUP 3 - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds., capacity), Transit mix, dumps (5 to 9 yd., capacity), flatbody material trucks (straight jobs), greasers, tiremen, mechanics' helpers, rubber-tired (towing & pushing flatbody vehicles), form trucks

GROUP 4 - Dump trucks (10 to 15 yd., capicity)

GROUP 5 - Dump trucks (over 15 yd., capacity), bottom and end dump euclids, all other euclid type trucks, turnarockers, ross carriers, athey wagons, A-frames, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumcretes or batch trucks, specialized earth moving equipment, off-highway tandem back-dump, twin engine equipment and double hitched equipment (where not self-loaded)

SUPERSEDEAS DECISION

STATE: Oklahoma

COUNTIES: Oklahoma, Cleveland, Caddo, Canadian, Grady, Kingfisher, Logan, Lincoln, McClain, Seminole & Pottawatomie

DECISION NO: OK77-4002

DATE: Date of Publication

SUPERSEDES DECISION NO. OK76-4136 dated July 30, 1976 in 41 FR 32177

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.70	.40	.60		.02
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS-STONEMASONS:					
Oklahoma, Cleveland, Canadian and McClain Counties	9.67	.45	.50		.05
Lincoln, Pottawatomie and Seminole Counties	9.00	.45	.30		.05
Kingfisher County	8.05				
Logan County	8.35	.45	.50		.05
Caddo and Grady Counties	8.70	.50	.30		.10
CARPENTERS - ZONE I					
Carpenters	7.80				
Power saw operator	8.10				
Millwrights-Piledrivermen	9.35	.30	.25		.04
CARPENTERS - ZONE II					
Carpenters	9.10	.40	.25		.04
Millwrights-Piledrivermen	9.35	.40	.25		.04
Power saw operator	9.35	.40	.25		.04
CARPENTERS - ZONE III					
Carpenters	8.56	.30	.25		.04
Power saw operator	8.81	.30	.25		.04
Millwrights-Piledrivermen	8.81	.30	.25		.04
CARPENTERS - ZONE IV					
Carpenters	7.75	.25			.02
Millwrights-Piledrivermen	8.575	.25			.02
CARPENTERS - ZONE V					
Carpenters	7.25				
Millwrights-Piledrivermen	9.35	.40	.25		.04

CARPENTERS AREA DEFINITION

ZONE I - Northern 1/2 of Lincoln County bound on the South by Interstate 35 on the East of Highway 99

ZONE II - Pottawatomie County and part of Lincoln County south of Turner Turnpike; the City limits of Moore in Cleveland County; all of Oklahoma, Canadian, Kingfisher and Logan Counties.

ZONE III - McClain County and Cleveland County (except that area covered by the City limits of Moore)

ZONE IV - Seminole County

ZONE V - Caddo and Grady Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Lincoln, Oklahoma, McClain, Caddo, Grady, Cleveland, Canadian, Logan, and Kingfisher Counties	$ 8.48	.35			
ELECTRICIANS:					
Zone I	9.30	.50	1%+.50		1/2%
Zone II	9.55	.50	1%+.50		1/2%
Zone III	9.80	.50	1%+.50		1/2%
CABLE SPLICERS:					
Zone I	9.55	.50	1%+.50		1/2%
Zone II	9.80	.50	1%+.50		1/2%
Zone III	10.05	.50	1%+.50		1/2%

ELECTRICIANS-CABLE SPLICERS ZONE DEFINITION

ZONE I - the area within the twelve mile radius of the main Post Office located in one of the cities listed as follows: El Reno, Moore, Norman, and Oklahoma City.

ZONE II - the area between the twelve mile zone 1 radius to thirty mile radius of the zone 1 post office, except where zone 2 intercepts another zone 1 area.

ZONE III - the area outside zones 1 and 2 and within the local union area.

ELEVATOR CONSTRUCTORS	8.855	.495	.32	2½%+a+b	.02
ELEVATOR CONSTRUCTORS HELPER	70%JR	.495	.32	2½%+a+b	.02
ELEVATOR CONSTRUCTORS HELPER(PROB.)	50%JR				
GLAZIERS	7.20				
IRONWORKERS	9.60	.45	.65		.12
LABORERS:					
ZONE I					
Group I	6.50	.25	.30		
Group II	6.70	.25	.30		
ZONE II					
Group I	5.35	.25	.30		
Group II	5.80	.25	.30		
ZONE III					
Group I	5.55	.25	.30		
Group II	5.85	.25	.30		
ZONE IV					
Group I	5.20	.25	.30		
Group II	5.40	.25	.30		

LABORERS CLASSIFICATION DEFINITION

GROUP I - Unskilled laborers
GROUP II - Air tool operator (jackhammer-vibrator), mason tenders, mortar mixers, pipelayers (concrete and clay), plasterers tenders

AREA COVERED BY LABORERS ZONES

ZONE I - Oklahoma, Canadian, Logan, Pottawatomie, Lincoln and Cleveland Counties.
ZONE II - McClain, Caddo and Grady Counties
ZONE III - Seminole County
ZONE IV - Kingfisher County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$8.60				.01
LINE CONSTRUCTION:					
Linemen	9.35		1%		1/2%
Cable splicers	9.91		1%		1/2%
Hole digger operator	8.49		1%		1/2%
Heavy Equipment operators (or pole cat equivalent)	8.49		1%		1/2%
Line truck driver (winch op.)	7.68		1%		1/2%
Jack hammerman	7.00		1%		1/2%
Powderman	8.49		1%		1/2%
Groundman (1st year)	4.86		1%		1/2%
Groundman	6.24		1%		1/2%
Truck driver (flat bed, ton and half and under)	6.66		1%		1/2%
MARBLE MASONS	9.10		.20		
PAINTERS:					
Brush	7.45	.45	.35	.30	.03
Spray under 30 feet	7.95	.45	.35	.30	.03
Spray over 30 feet	8.45	.45	.35	.30	.03
Sandblasting under 30 feet	7.95	.45	.35	.30	.03
Sandblasting over 30 feet	8.45	.45	.35	.30	.03
Hazardous work	7.95	.45	.35	.30	.03
Paperhanging	8.45	.45	.35	.30	.03
Tapers using machine tools	7.95	.45	.35	.30	.03
PLASTERERS	9.30				.01
PLUMBERS-PIPEFITTERS	10.27	.60	.75		.10
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - All crane type equipment with 200' of boom or over (including jib)
GROUP II - All crane type equipment with 150-200' of boom (including jib)
GROUP III - All crane type equipment with 100-150' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more (as rates by mfg.), sideboom (booms 30' and over), guy derrick
GROUP IV - Heavy duty mechanic welder, crane-hook and overhead monorail, whirley, panel board batch plant operator, piledriver engineer, dragline, shovel, clamshell, backhoe, sideboom (under 30'), gradall, hydro crane, cherry picker, hoists while operating 2 or more drums, hoists while doing stack & chimney work (1 or 2 drums), power driven hole digger (with 30' and longer mast)
GROUP V - Motor patrol (blade), fork lift (35' and over), dozer (engine h.p. 65 or over), fordson tractor or like equipment with hoe or loader equipment or ditcher, scraper type equipment, tournapull, DW 10, 15, 16, 20, 21 and similar rubber-tired equipment, Euclid, TS-24 and similar, loader operator or Hi-lift (Engine h.p. 65 or over), asphalt lay machine, tail boom, conveyor-multiple, panel board control, power driven hole digger with less than 30' mast trenching machine, concrete pump-boom type
GROUP VI - Locomotive engineer, boring machine, tug boat, mixer, 18 cu. ft. and over, sand barge, dredging machine, tugger, hoist - when operating one drum, welding machine, 3 to 6, air compressor, 3 to 5, 500 cu. ft. and under, air compressor, over 500 cu. ft., (1) pump battery, 3 to 6, fork lift, bobcat and similar equipment, generator plant engineers, diesel electric, winch truck with a frame, roller, all types, outside elevator or building type of personnel hoist, concrete buster or tamper, heaters under jurisdiction of op., engineers, fireman, boiler operator, crushing plants, oiler distributor, pulvimixer, farmer tractor-with or without attachments, batch plant operator - duel, continous or belt bulk handling, screed operator, concrete pump, form grader, screening plant, well point pump operator, signal man on large whirleys when and if required, operator for rotary drilling machines when operated from console or machines

ENGINEERS FOR MACHINES NOT LISTED UNDER THE ABOVE CLASSIFICATIONS SHALL RECEIVE THE SCALE COMPARABLE TO THESE CLASSIFICATIONS.

GROUP VII - Greaser, tilt top trailer operator
GROUP VIII - Permanent elevator - building type (automatic, concrete mixer, with hopper less than 18 cu. ft., air compressor, 500 cu. ft. and under (1 or 2) welding machine (1 or 2), pump (1 or 2), fuelman, conveyor operator-single continuous belt bulk handling
GROUP IX - Asphalt lay machine back end man, helpers
GROUP X - Truck crane oiler driver or truck crane oiler

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	$ 8.40	.45	.25		.04
SHEET METAL WORKERS	9.91	.45	.40		.05
SOFT FLOOR LAYERS:					
Resilient floor layers and carpet layers	8.85	.50			
SPRINKLER FITTERS	10.90	.50	.90		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appt. Tr.
TERRAZZO WORKERS	$ 9.10		.20		
TERRAZZO WORKERS' HELPERS	6.98				
TERRAZZO FLOOR MACHINE MAN	7.08				
TERRAZZO BASE MACHINE MAN	7.28				
TILE SETTERS	9.10		.20		
TILE & MARBLE HELPERS:					
Experienced helpers	6.65				
TRUCK DRIVERS:					
Group I	6.92				
Group II	6.92				
Group III	6.62				

TRUCK DRIVERS CLASSIFICATION DEFINITION

GROUP I - Truck drivers for heavy equipment such as lowboys, heavy winch and floats

GROUP II - Heavy earth moving equipment such as dump trucks and Euclids.

GROUP III - Truck drivers and swampers, such as dump trucks, flat beds, stake bodies, and 3/4, and 1/2 ton pick-up trucks.

WELDERS - received rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

A. 1st 6 mos. - none; 6 mos. to 5 yrs. 2%; over 5 yrs. - 4% of basic hourly rate.

B. Paid Holidays A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

[FR Doc.77-1035 Filed 1-13-77;8:45 am]