

FRIDAY, APRIL 8, 1977



# federal register

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## Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

## List of Public Laws

This is a continuing numerical listing of public bills which have become law, together with the law number, the title, the date of approval, and the U.S. Statutes citation. The list is kept current in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

S. 626..... Pub. L. 95-17  
 "Reorganization Act of 1977."  
 (Apr. 6, 1977; 91 Stat. 29.) Price: \$0.35.

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

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

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

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

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

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195-----18412  
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17-----18106, 18109  
611-----18607

PROPOSED RULES:

17-----18287

FEDERAL REGISTER PAGES AND DATES—APRIL

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# rules and regulations

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

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

## Title 7—Agriculture

### CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

#### MOUNTAIN PLAINS REGIONAL OFFICE New Administrative Boundaries, Address of New Office

##### Correction

In FR Doc. 77-7847 appearing at page 15053 in the issue for Friday, March 18, 1977, in the third column on page 15054, in 230.19, the paragraphs which are now designated as paragraphs "(e) and (a)", respectively, should be "(d) and (e)", respectively.

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

#### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

##### Commuted Traveltime Allowances

##### Correction

In FR Doc. 77-7947 appearing at page 15055 in the issue for March 18, 1977, make the following changes:

1. On page 15058 under "New Jersey", the entries for McGuire Air Force Base should be:

McGuire AFB.....	Philadelphia, Pa.....	3
Do.....	Freehold.....	2
Do.....	Seabrook.....	4
Do.....	Trenton.....	3

2. In the table on page 15060, under Texas, the entry adjacent to "Freeport" should read across the page as follows:

Freeport..... Galveston and Houston.....

The number "3", should appear under the column headed "Metropolitan area/outside".

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

[Lemon Reg. 87]

#### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

##### Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period April 10-16, 1977. This regulation is needed to provide for orderly marketing of fresh lemons for the regulation period because of the production and marketing

situation confronting the lemon industry.

EFFECTIVE DATE: April 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202-447-3545).

#### SUPPLEMENTARY INFORMATION:

(a) *Findings.* (1) Pursuant to the amended marketing agreement 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 amended marketing agreement and order, and upon other available information, it is found that the limitation of handling of such lemons, as provided in this regulation 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 specified week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation for the quantity of lemons it considers advisable to be handled during the specified week. The recommendation resulted from consideration of the factors covered in the order. The committee further reports the demand for lemons is easier this week.

Average f.o.b. price was \$5.58 per carton the week ended April 2, 1977, compared to \$5.53 per carton the previous week. Track and rolling supplies at 110 cars were unchanged from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be established as provided in this regulation.

(3) It is further found that it is impracticable and is contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date until 30 days after publication 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 it must become effective to effectuate

the declared policy of the act is insufficient. A reasonable time is permitted, for preparation for the effective time; and good cause exists for making the regulation effective as specified. The committee held an open meeting during the current week, after giving due notice, 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 were promptly submitted to the Secretary after the meeting was held, and information concerning the provisions and effective time has been provided to handlers of lemons. It is necessary, to effectuate the declared policy of the act, to make this regulation effective as specified. The committee meeting was held on April 5, 1977.

#### § 910.387 Lemon Regulation 87.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period April 10, 1977, through April 16, 1977, is established at 230,000 cartons.

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

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

Dated: April 7, 1977.

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

[FR Doc. 77-10605 Filed 4-7-77; 11:53 am]

## Title 19—Customs Duties

### CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 77-103]

#### PART 159—LIQUIDATION OF DUTIES Countervailing Duties—Unwrought Zinc From Spain

AGENCY: Customs Service, Treasury.

ACTION: Imposition of Countervailing Duties and Suspension of Liquidation.

SUMMARY: This notice is to inform the public that it has been determined that the Government of Spain has given benefits which constitute bounties or grants within the meaning of the countervailing duty law upon the manufacture, production or exportation of unwrought zinc. Consequently, countervailing duties in the amount of these benefits will

be collected in addition to duties normally due on shipments of this merchandise.

EFFECTIVE DATE: April 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. William Trujillo, Operations Officer, Technical Branch, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. (202-566-5492).

**SUPPLEMENTARY INFORMATION:**

On December 22, 1976, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (41 FR 55765-66). This notice stated that it preliminarily had been determined that benefits had been paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of unwrought zinc from Spain under the Spanish Government tax remission system known as the desgravacion fiscal, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (herein referred to as "the Act").

Unwrought zinc is provided for in the Tariff Schedules of the United States under item number 626.02.

The notice further stated that in some instances benefits derived from the desgravacion fiscal constitute bounties or grants within the meaning of section 303 of the Act, and provided interested parties 30 days from the date of publication to submit relevant data, views or arguments, in writing with respect to the preliminary determination.

Some information has been received during the comment period which, while limited in scope, is sufficient to proceed. Further information is expected. After consideration of all information received it is hereby determined that bounties or grants are paid or bestowed, directly or indirectly, on exports of unwrought zinc from Spain within the meaning of section 303 of the Act.

Unwrought zinc receives a desgravacion fiscal rebate of 12 percent. Included in the rebate are indirect taxes which appear to be directly related to the final product or its components. The Treasury Department does not consider the rebate of such indirect taxes to be bounties or grants within the meaning of section 303 of the Act. The amount of these taxes is approximately 8 percent, therefore the bounty or grant would be 4 percent. Further information may modify the amount of the bounty or grant.

Accordingly, notice is hereby given that unwrought zinc imported directly or indirectly from Spain, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act, until further notice the net amount of such bounties or grants has been esti-

mated and declared to be 4 percent of the export price. Declarations of the net amount of the bounties or grants determined to have been paid, directly or indirectly, upon the manufacture, production, or exportation of unwrought zinc from Spain will be published in subsequent issues of the FEDERAL REGISTER.

The liquidation of all entries for consumption or withdrawals from warehouse for consumption of such dutiable unwrought zinc imported directly or indirectly from Spain which benefits from such bounties or grants and which are subject to this order shall be suspended pending declarations of the net amounts of the bounties or grants paid or bestowed. A deposit of the estimated countervailing duty, in the amount of 4 percent of the export price, shall be required at the time of entry for consumption or withdrawal from warehouse for consumption.

Effective on April 8, 1977, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable unwrought zinc imported directly or indirectly from Spain, which benefits from these bounties, or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of such unwrought zinc from Spain.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.46(f)) is amended by inserting after the last entry for Spain the words "Unwrought Zinc," in the column headed "Commodity," the number of this Treasury Decision in the column headed "Treasury Decision," and the words "Bounty Declared-Rate" in the column headed "Action".

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624).)

G. R. DICKERSON,  
*Acting Commissioner of Customs.*

Approved: March 31, 1977.

JOHN H. HARPER,  
*Assistant Secretary  
of the Treasury.*

[FR Doc. 77-10478 Filed 4-7-77; 8:45 am]

Title 22—Foreign Relations  
CHAPTER I—DEPARTMENT OF STATE  
[DR 108.734]  
PART 51—PASSPORTS  
Subpart A—General  
VALIDITY OF DIPLOMATIC PASSPORTS  
*Correction*

In FR Doc. 77-9916 appearing on page 17869 of the issue for Monday, April 4,

1977, the Departmental Regulation number, 108.734, was omitted from the headings and should read as set forth above.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION,  
DEPARTMENT OF LABOR

PART 694—MINIMUM WAGE RATES IN  
INDUSTRIES IN THE VIRGIN ISLANDS

Wage Order

AGENCY: Department of Labor.

ACTION: Final Rule.

**SUMMARY:** In compliance with the Fair Labor Standards Act, a committee has made a biennial examination of the minimum wage rates in the Virgin Islands to determine to what extent such rates should be increased. The minimum wage rates determined by the committee are hereby published. The effect of this document is to mandate the minimum wage rates to be paid in the Virgin Islands.

EFFECTIVE DATE: April 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Josephine C. Stein, Director, Division of Industry Committees, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Room N4428, Washington, D.C. 20210. (202) 523-8720.

**SUPPLEMENTARY INFORMATION:** 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. 649 (42 FR 3039, 3040 and 3041), the Secretary of Labor appointed and convened Industry Committee No. 17 for Industries in the Virgin Islands, 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. 17 are hereby published, revising § 694.1 of Part 694, Title 29, Code of Federal Regulations.

This document was prepared under the direction and control of Warren D. Landis, Acting Administrator, Wage and Hour Division.

As amended, § 694.1 reads as follows:

§ 694.1 Wage rates.

(a) Pre-1966 coverage classifications.

(1) *Watch assembly classification.* (i) The minimum wage rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on December 1, 1977.

(ii) This classification is defined as the assembly of watches and watch movements, including related repair work.

(2) *Milk processing classification.* (i) The minimum wage rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

(3) *Retailing, wholesaling and warehousing classification.* (i) The minimum wage rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

(b) 1966 coverage classifications.

(1) *Agriculture classification.* (i) The minimum wage for this classification is \$1.72 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.02 an hour on November 1, 1977. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1978 and on May 1 of each subsequent year until the mainland rate is reached.

(2) *Retailing, wholesaling and warehousing classification.* (i) The minimum wage rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

(3) *Construction classification.* (i) The minimum rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

(4) *Laundry and cleaning classification.* (i) The minimum rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

(5) *Manufacturing activities classification.* (i) The minimum rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate

will increase to \$2.30 an hour on November 1, 1977.

(c) 1974 coverage classifications.

(1) *Domestic service classification.* (i) The minimum wage rate for this classification is \$1.50 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$1.80 an hour on November 1, 1977. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1978 and on May 1 of each subsequent year until the mainland rate is reached.

(2) *Motion picture theater classification.* (i) The minimum wage rate for this classification is \$2.10 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

(3) *Retail and service employees classification.* (i) The minimum wage rate for this classification is \$2.05 an hour. Under section 6(c) the rate will be increased by \$0.15 an hour on May 1, 1977. The rate will increase to \$2.30 an hour on November 1, 1977.

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

Signed at Washington, D.C., on this 5th day of April 1977.

WARREN D. LANDIS,  
Acting Administrator, Wage and  
and Hour Division, U.S. De-  
partment of Labor.

[FR Doc.77-10519 Filed 4-7-77;8:45 am]

Title 32—National Defense  
CHAPTER VI—DEPARTMENT OF THE  
NAVY  
PART 724—NAVAL DISCHARGE REVIEW  
BOARD  
Revision

AGENCY: Naval Discharge Review Board, Naval Council of Personnel Boards, Department of the Navy.

ACTION: Final Rule.

SUMMARY: This rule revises the regulations governing the functions and procedures of the Naval Discharge Review Board. This revision reflects the adoption of the changes which were previously offered for public comment, and it also reflects the adoption of changes made pursuant to a District Court approved settlement. Further, this revision is intended to provide more comprehensive guidance for the Naval Discharge Review Board and for those who bring matters before it.

EFFECTIVE DATES: The Department of the Navy Manual for Discharge Review, 1977, is effective from April 18, 1977, and will apply to all cases pending

before the Naval Discharge Review Board as well as to new applications.

ADDRESSES: Written comments concerning the revised Naval Discharge Review Board instructions must be submitted to Rear Admiral John M. DeLargy, USN, Director, Naval Council of Personnel Boards, 801 North Randolph Street, Arlington, VA 22203. All comments received will be available for public inspection, Monday through Friday, during normal business hours, in the Director's office, Room 911, 801 North Randolph Street, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT:

RADM John M. DeLargy  
Room 911, 801 North Randolph Street  
Arlington, VA 22203  
(202)—692-4355

SUPPLEMENTARY INFORMATION: Under the authority of 10 U.S.C. 1553, the Secretary of the Navy has established the Naval Discharge Review Board and has, from time to time, promulgated regulations governing the functions and procedures of that Board. On March 30, 1977, the Secretary approved the Department of the Navy Manual for Discharge Review, 1977, a complete revision of the prior direction contained in Secretary of the Navy Instruction 5420.17, Navy Discharge Review Board; functions and procedures, of April 8, 1974, as published in the FEDERAL REGISTER (40 FR 4274, January 29, 1975). On February 9, 1977, there was published in the FEDERAL REGISTER (FR Document 77-4108) at page 8156, a notice of proposed rulemaking proposing to amend certain sections of Secretary of the Navy Instruction 5420.174 and inviting public participation therein. One general comment was received concerning correction of records of retired personnel, but no written comments were received on the proposed amendments. The general substance of these proposed amendments has been incorporated in the Department of the Navy Manual for Discharge Review, 1977. The revised Naval Discharge Review Board instruction prescribes Naval Discharge Review Board organization, the authority and jurisdiction of the Naval Discharge Review Board, policy and procedure pertaining to the review of discharges from the Naval Service, designates and directs the Naval Discharge Review Board to make final determinations as to whether discharges from the Naval Service should be changed and the nature of the change, if warranted, and establishes criteria for those decisions of the Naval Discharge Review Board to be reviewed by the Secretary. By this revision a petitioner may submit contentions and/or issues of facts, law, or discretion at any time prior to the Board consideration of the case, and the Board is required to provide appropriate statements of its findings, reasons and conclusions. Since these rules specify Naval Discharge Review Board procedures to be followed, since no substantive com-

ments were received in response to the notice of proposed rulemaking published February 9, 1977, and the general substance of that notice has been incorporated, and since many of these changes are required under a stipulation of dismissal approved by the U.S. District Court for the District of Columbia on January 31, 1977, it has been determined that further invitation for public comment on these changes prior to adoption would be unnecessary and impractical, and therefore not required under the public rulemaking provisions in Parts 296 and 701 of 32 CFR. However, interested persons are invited, on a continuing basis, to comment in writing on these revised Naval Discharge Review Board regulations. All written material received will be considered before taking action on any future revision of these regulations and the instructions may be changed in light of comments received.

In consideration of the foregoing and for the reasons given by the authority of section 301, Title I, Act of 22 June 1944 (10 U.S.C. 1553), 32 CFR Part 724 is revised as follows:

#### Subpart A—Definitions

Sec.	
724.101	Naval Service.
724.102	Naval Discharge Review Board.
724.103	Discharge.
724.104	Administrative discharge.
724.105	Punitive discharge.
724.106	Clemency discharge.
724.107	Petition.
724.108	Petitioner.
724.109	Next of kin.
724.110	Legal representative.
724.111	Representative.
724.112	Discharge review.
724.113	Documentary discharge review.
724.114	Discharge review hearing.
724.115	Standards of naval law and discipline.
<b>Subpart B—Authority for Departmental Discharge Review</b>	
724.201	Authority.
724.202	Statutory/directive authority.
<b>Subpart C—Policy Pertaining to Review of Naval Discharges</b>	
724.301	Broad objectives of naval discharge review.
724.302	Parameters of naval discharge review.
724.303	Eligibility for naval discharge review.
724.304	Authority for review of naval discharges; jurisdictional limitations.
724.305	Jurisdictional determinations.
724.306	Disposition of petitions for discharge review.
724.307	Implementation of Board decisions.
724.308	Recommendation for extraordinary relief.
724.309	Evidence supporting petitions.
724.310	Review action in instances of lost records.
724.311	Availability of records for reference by petitioner.
724.312	Attendance of witnesses.
724.313	Expenses.
724.314	Military representation.
724.315	Limitation—failure to appear for hearing.
724.316	Limitation—repetitive review.
724.317	Limitation—continuances and postponements.

Sec.	
724.318	Withdrawal of petition.
724.319	Review on motion of the Board.
724.320	Waiver of hearings in instances of prima facie reason for change.
724.321	Secretarial review of naval discharge review decisions.
724.322	Scheduling of discharge reviews.
724.323	Hearing sites.
724.324	Traveling Board support and augmentation by Regular and Reserve activities.
724.325	Court-martial specifications, presumption concerning.
724.326	Previous Discharge Review Board decisions/dispositions.

#### Subpart D—Principal Elements of the Navy Department Discharge Review System

724.401	Petitioners.
724.402	Naval Discharge Review Board.
724.403	Director, Naval Council of Personnel Boards.
724.404	Commandant of the Marine Corps or the Chief of Naval Personnel.
724.405	Chief, Bureau of Medicine and Surgery.
724.406	Chief of Naval Reserve.
724.407	The Secretary.

#### Subpart E—Rights and Procedures Applicable to Petitions for Naval Discharge Review

724.501	Rights of a petitioner.
724.502	Procedures for petition for discharge review.
724.503	Response to petition for discharge review.

#### Subpart F—Naval Discharge Review Board Mission and Functions

724.601	General.
724.602	Mission.
724.603	Functions.

#### Subpart G—Organization of the Naval Discharge Review Board

724.701	Composition.
724.702	Executive management.
724.703	Recorders.
724.704	Counsel for the Board.

#### Subpart H—Procedures of the Naval Discharge Review Board

724.801	Matter to be considered in discharge review.
724.802	Issues/contentions raised by the petitioner.
724.803	Findings.
724.804	Conclusions.
724.805	Decisions.
724.806	Implementation of review decisions.
724.807	Decision process.
724.808	Issuance of decisions following discharge review.
724.809	Conduct of discharge review hearings.
724.810	Records of Board proceedings.
724.811	Final disposition of the record of proceedings in discharge review.
724.812	Records of discharge review hearings.
724.813	Petitioner examination of documents to be considered during discharge review.
724.814	Availability of Naval Discharge Review Board documents for public inspection and copying.

#### Subpart I—Director, Naval Council of Personnel Boards

724.901	Mission.
724.902	Functions.

#### Subpart J—Responsibilities in Support of the Board

724.1001	Responsibility.
724.1002	Functions of the Commandant of the Marine Corps and Chief of Naval Personnel.

Sec.	
724.1003	Functions of the Chief of the Bureau of Medicine and Surgery.
724.1004	Functions of the Commandant of the Marine Corps and Chief of Naval Reserve (refer to § 724.324).
724.1005	Functions of the Commandants of Naval Districts and Directors of Marine Corps Districts (refer to § 724.324).

Appendix A—Methods by which individuals may be involuntarily separated from the naval service (other than by reason of being physically unfit).

Appendix B—Policy statements by the Secretary of Defense addressing certain categories of discharges.

Appendix C—Oath or affirmation to be administered to Discharge Review Board members.

Appendix D—Principal forms employed by the Naval Discharge Review Board.

AUTHORITY: Sec. 301, Title I, Act of June 22, 1944 (10 U.S.C. 1553).

#### Subpart A—Definitions

##### § 724.101 Naval service.

The Naval Service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

##### § 724.102 Naval Discharge Review Board.

(a) A board, hereinafter referred to as the "Board", established by the Secretary of the Navy pursuant to Title 10, United States Code (1970 ed.), section 1553, for the review of discharges of former members of the Naval Service.

(b) Where reference is made to the "Traveling Board", it is intended only to differentiate the Board performing its functions elsewhere than at its home office in the Washington, DC area. The nature of and procedures for the review functions are identical whether performed in Washington or elsewhere.

##### § 724.103 Discharge.

(a) In the context of the review function prescribed by 10 U.S.C. 1553, a discharge or dismissal is a complete separation from the Naval Service, other than one pursuant to the sentence of a general court-martial.

(b) By reason of usage, the term "discharge" is predominantly applicable to the separation of enlisted personnel for any reason, and the term "dismissal" to the separation of officers as a result of Secretarial or general court-martial action; however, Appendix A to this Part sets forth other applicable separations.

(c) In the context of the mission of the Board, the term "discharge" used herein shall, for purpose of ease of expression, include any complete separation from the Naval Service other than that pursuant to the sentence of general court-martial.

##### § 724.104 Administrative discharge.

A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Chief of Naval Personnel, but spe-

cifically excluding separation by sentence of a court-martial. There are three types of administrative discharges:

(a) *Honorable*. A separation from the Naval Service with honor. The issuance of an honorable discharge is contingent upon proper military behavior and performance of duty.

(b) *General*. A separation from the Naval Service under honorable conditions. The issuance of a general discharge is contingent upon military behavior and performance of duty which is not sufficiently meritorious to warrant an honorable discharge.

(c) *Under Other Than Honorable Conditions (formerly termed Undesirable Discharge)*. A separation from the Naval Service under conditions other than honorable. It is issued for misconduct, security reasons, or for the good of the service in lieu of trial by court-martial, and was formerly issued for unfitnes.

#### § 724.105 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad conduct*. A separation from the Naval Service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable*. A separation from the Naval Service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

#### § 724.106 Clemency Discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance as a replacement for an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as having been under other than honorable conditions, nor does it serve to change, seal, erase or in any way modify the individual's past military record.

#### § 724.107 Petition.

In the context of this Part, a written application to the Board for review of discharge submitted by a former member of the Naval Service or by spouse, next of kin or legal representative where a former member is deceased or incompetent. Normally, Department of Defense Form 293 is used for petitions.

#### § 724.108 Petitioner.

The person whose discharge is the subject of a petition, usually the former

service member unless deceased or incompetent. The term petitioner as used in this Part shall include authorized applicants other than former members, e.g., spouse, next of kin, legal representative.

#### § 724.109 Next of kin.

The person nearest in degree of blood relationship in order of legal precedence: the eldest son, eldest daughter, father, mother, eldest brother, eldest sister, eldest grandchild.

#### § 724.110 Legal representative.

In distinction from the spouse or next of kin, the person who, in law, other than by power of attorney or employment, represents the petitioner.

#### § 724.111 Representative.

A person who is designated in writing by the petitioner to provide assistance to the petitioner in the discharge review process. By designating a service organization, the person provided by that organization is considered to have been designated. Military officers of any service on extended active duty are precluded from such designation.

#### § 724.112 Discharge review.

Reappraisal at the level of the Navy Department of discharges from the Naval Service. The object of the reappraisal is to determine whether the discharge should be changed, and if so, the nature of the change.

#### § 724.113 Documentary discharge review.

A formal session of the Board convened for the purpose of reviewing, on the basis of documentary data, a petitioner's discharge. The documentary data shall include the petition together with all information accompanying that petition, available service and medical records, and any other information considered relevant by the Board.

#### § 724.114 Discharge review hearing.

A formal session of the Board convened for the purpose of reviewing a petitioner's discharge on the basis of a personal appearance, as well as documentary data. The personal appearance may be by the applicant or by a representative of the applicant, or both.

#### § 724.115 Standards of naval law and discipline.

Those standards stated in statutes, regulations, bureau manuals, directives of the Department of the Navy, and other written public expressions of policy by competent authorities, together with interpretations thereof by the courts, the Attorney General, and the Judge Advocate General of the Navy.

### Subpart B—Authority for Departmental Discharge Review

#### § 724.201 Authority.

(a) The Naval Discharge Review Board, established pursuant to 10 U.S.C. Section 1553, is a component of the Naval Council of Personnel Boards. The

Secretary of the Navy, by SECNAVINST 5430.7K, Assignment of Responsibilities to and among the Civilian Executive Assistants to the Secretary of the Navy, has placed the Naval Council of Personnel Boards under the direct supervision of the Assistant Secretary of the Navy (Manpower and Reserve Affairs); by SECNAVINST 5420.135B, Navy Council of Personnel Boards, has restated the organization, mission, duties and responsibilities of the Naval Council of Personnel Boards to include the Naval Discharge Review Board; and by subsequent action promulgated by the Chief of Naval Operations, OPNAV NOTES 5450 of September 9, 1976 and January 24, 1977, has approved the Naval Council of Personnel Boards as a shore activity with the following mission statement:

"To administer and supervise assigned boards and councils." The Assistant Secretary of the Navy (Manpower and Reserve Affairs), pursuant to Titles 5 and 10, U.S.C., the above authority, and the provisions of U.S. Navy Regulations 1973, promulgates this Part.

#### § 724.202 Statutory directive authority.

(a) The Board, in its conduct of discharge reviews, shall be guided by applicable statutes, regulations, bureau manuals, directives of the Department of the Navy, and other written public expressions of policy by competent authority, such as:

(1) 10 U.S.C. 1553 (1970). Review of discharge or dismissal.

(a) The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of Veterans' Affairs under Chapter 59 of Title 38.

(2) The Secretary of Defense by memoranda dated August 13, 1971 and April 28, 1972 directed a review for re-characterization (i) of administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use, and (ii) punitive discharges and dismissals issued solely for conviction of personal

use of drugs and possession of drugs for the purpose of such use for those discharges executed as a result of a case completed or in process on or before July 7, 1971. (See Appendix B of this Part)

(3) Department of Defense Directive 1332.14 of December 29, 1976, prescribes policy, standards and procedures which govern the administrative separation of enlisted persons from the armed forces.

#### Subpart C—Policy Pertaining to Review of Naval Discharges

##### § 724.301 Broad objectives of naval discharge review.

Naval discharge review shall have as its broad objectives:

(a) the furtherance of good order and discipline.

(b) the correction of injustice or inequity in the discharge issued.

(c) the correction of administrative or clerical errors.

##### § 724.302 Parameters of naval discharge review.

(a) A naval discharge relates solely to naval service. Accordingly, information considered in discharge review shall normally be confined to that which is relevant and material to the petitioner's service, including character, conduct, physical condition or other material facts at the time of entry into and separation from the period of service concerned.

(b) In determining whether a discharge should be changed, consideration shall be given to whether the discharge was properly and equitably issued under:

(1) Standards of naval law and discipline existing at the time of the petitioner's separation, or,

(2) Such standards differing therefrom in the petitioner's favor which subsequent to separation were made expressly retroactive to separations of the type and character received by the petitioner, or,

(3) Where deemed by the Board to be essential to achieving a just and equitable result in a case, such other standards differing therefrom in the petitioner's favor which, not having been made expressly retroactive, were subsequently made generally applicable on a service-wide basis to separations of the type and character received by the petitioner.

##### § 724.303 Eligibility for naval discharge review.

Any former member of the Naval Service, eligible for review under 10 U.S.C. 1553, or surviving spouse, next of kin or legal representative, shall upon submission of a petition be afforded a review of the member's discharge from the Naval Service.

##### § 724.304 Authority for review of naval discharges; jurisdictional limitations.

(a) The Board shall have no authority to: (1) Issue a new discharge; (2) Revoke a discharge; (3) Reinstate a person in the Naval Service; (4) Recall a former member to active duty; (5) Change re-

enlistment codes; (6) Make recommendations for reenlistment; (7) Change the reason for discharge from or to physical disability; (8) Determine eligibility for veterans' benefits; (9) Review a release from active duty, until a final discharge has been issued.

(b) Except as directed by the Secretary of the Navy, review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of petition for review exceeds fifteen years.

##### § 724.305 Jurisdictional determinations.

(a) The determination as to whether the Board has jurisdiction in any case shall be predicated on the policy stated in § 724.304. Decisions shall be made by administrative action without referral to the Board. Normally, they shall be made by the Executive Secretary of the Board, or they may be referred to the Director, Naval Council of Personnel Boards.

##### § 724.306 Disposition of petitions for discharge review.

One of three dispositions will be made of a petition for review of a discharge:

(a) the petition may be denied for reason of (1) absence of jurisdiction; (2) previous review on the same evidence; or

(b) the petition may be withdrawn by the petitioner; or

(c) the petition may be accepted and the discharge reviewed by the Board, resulting in (1) change to the discharge, or (2) no change.

##### § 724.307 Implementation of Board decisions.

The Commandant of the Marine Corps and the Chief of Naval Personnel shall be notified by the Board of decisions in each discharge review case and shall implement the decisions within their respective services.

##### § 724.308 Recommendation for extraordinary relief.

In extraordinary circumstances wherein the Board perceives justification for a recommendation for extraordinary relief, it may make such a recommendation to the Secretary, citing specific reasons for the recommendation. The Board is not authorized to grant such relief on its own authority.

##### § 724.309 Evidence supporting petitions.

In the absence of evidence to the contrary, naval discharges shall be considered just, equitable and properly administered. Normally, the burden of presenting evidence to the contrary shall rest with the petitioner. Petitions must be complete in substance and detail at the time of their acceptance. When hearings are scheduled, petitioners must be prepared to present their case at the scheduled time. In the absence of any other evidence, naval discharge review shall be undertaken by examination of available service and health records of the petitioner. Petitions in which elements of relevant information are obviously omitted shall not be accepted but

shall be returned for completion and resubmission.

##### § 724.310 Review action in instances of lost records.

In the event that Department of the Navy personnel or health records associated with a requested review of discharge are not locatable at the custodial activity, the following action shall be taken by the Board:

(a) a certification that the records are lost shall be obtained from the custodial activity;

(b) the petitioner shall be notified of the situation and requested to provide such information and documents as may be desired in support of the petition;

(c) the documentary review/hearing shall be conducted with information available;

(d) if the information/documents provided by the petitioner are not sufficient to provide prima facie justification for a change in the type or nature of the discharge, the discharge shall be deemed to be proper under the legal presumption of regularity in the conduct of governmental affairs.

##### § 724.311 Availability of records for reference by petitioner.

(a) The Board is not required to furnish copies of or extracts from service or health records to former members of the Naval Service. Such information is available from the National Personnel Records Center, St. Louis, Missouri. In instances where the records are not available from the Records Center, information may be requested from the Commandant of the Marine Corps or the Chief of Naval Personnel.

(b) Upon request in person at the time and site of the case review, a petitioner or representative shall be furnished access to official records in the possession of the Board.

(c) Classified material shall not normally be reviewed by the Board or disclosed to petitioners. If necessary, unclassified, sanitized extracts of information needed shall be requested by the Board.

(d) Reports of the Naval Investigative Service or other investigative agencies shall not be reviewed by the Board or disclosed to petitioners. When it is necessary in the interest of a competent review to consider such matter, the Board shall be furnished a summary of matter in the report that is relevant to the review. The Board shall, in turn, make the summary available to the petitioner or representative.

##### § 724.312 Attendance of witnesses.

Arrangement for attendance of witnesses testifying in behalf of the petitioner at discharge review hearings is the responsibility of the petitioner. The Board is not authorized to subpoena witnesses or to otherwise require their presence.

##### § 724.313 Expenses.

No expense incurred by petitioners, representatives, witnesses, or by any other persons in behalf of petitioners

shall be paid by the Department of the Navy.

§ 724.314 Military representation.

No active duty military officer may act for or on behalf of a petitioner in the presentation of a case before the Board. (See 18 U.S.C. 205.)

§ 724.315 Limitation—failure to appear for hearing.

Except as authorized or directed by the Secretary of the Navy, further consideration of discharge review shall not be accorded a petitioner who requests a hearing and who, after being duly notified of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, not having made a prior, timely request for a continuance or withdrawal of the petition. Such individuals shall be deemed to have waived their right to such a hearing. Instead, the Board shall conduct a documentary review of the discharge and the decision of the Board shall be based on that review.

§ 724.316 Limitation—repetitive review.

(a) Except as authorized or directed by the Secretary of the Navy, repetitive review of an individual discharge shall not be undertaken except:

(1) On the basis of presentation of new, substantial, relevant information not available to the petitioner at the time of the original review, or

(2) Where the only previous consideration of the case was on the motion of the Board, or

(3) The original review did not involve a personal hearing and a personal hearing is now desired, and the provisions of § 724.315 do not apply.

(b) The decision as to whether information offered by a petitioner in substantiation of a request for a repetitive review is in fact new, substantial, relevant, and not available to the petitioner at the time of the original review shall be made by the Board in plenary session. In the event of a negative decision, the petitioner shall be notified of the non-acceptance of the petition and the reasons therefor.

(c) The production by the petitioner of new contentions not previously raised, or the elaboration by petitioner or petitioner's representative of different legal arguments or citations, is not new, substantial, relevant evidence as described above and will not support granting a new review.

§ 724.317 Limitation—continuances and postponements.

(a) A continuance of a discharge review hearing may be authorized by the President of the Board providing such continuance is of reasonable duration and is essential to achieving a full and fair hearing. Where a proposal for continuance is indefinite, the pending petition shall be returned to the petitioner with the option to resubmit when the case is fully ready for review.

(b) If a continuance is necessitated by reason of negligent failure of a peti-

tioner or representative to properly prepare the case for presentation, the case shall be closed without further action and the petitioner advised to resubmit the petition when the case is fully ready for review.

(c) Postponements of scheduled reviews shall not normally be permitted other than for demonstrated good and sufficient reason set forth by the petitioner in a timely manner, or for the convenience of the government. In instances wherein a requested postponement is not supported by acceptable reasons, the review shall proceed as scheduled.

§ 724.318 Withdrawal of petition.

A petitioner shall be permitted to withdraw a petition without prejudice at any time before the scheduled review.

§ 724.319 Review on motion of the Board.

(a) Reviews of naval discharges may be initiated by the Board on its own motion. However, it must transmit a written notice to the person concerned at the former member's last known address. If such a person is deceased or incompetent, the notice shall be transmitted to the surviving spouse, next of kin, or legal representative as appropriate.

(b) Such notice shall state the type and nature of the review to be held and shall advise the addressee of the right to appear before the Board in person or by representative, and to present information to the Board.

§ 724.320 Waiver of hearings in instances of prima facie reason for change.

Where preliminary examination of a petition for a personal hearing in a discharge review case reveals that prima facie reason exists in support of a change to the discharge, the petitioner shall be so notified and offered the option of accepting the change in lieu of a hearing with its attendant personal expense.

§ 724.321 Secretarial review of naval discharge review decisions.

(a) The decisions of the Board are final, subject only to Secretarial review.

(b) Secretarial review shall be limited to:

(1) Cases in which a preliminary showing is made by the petitioner that a Board decision was contrary to law or governing regulation;

(2) Cases involving special interest categories as designated by the Secretary, including all cases pertaining to officers, warrant officers and midshipmen;

(3) Non-unanimous decisions by the Board;

(4) Cases involving recommendation for extraordinary relief;

(5) Other cases of sensitive, novel, or of other important value identified by the Director, Naval Council of Personnel Boards.

(c) In those instances of Secretarial review, the requirements contained in Subpart H of this Part regarding provision of a statement of findings, con-

clusions, and reasons shall apply, except where the Secretary expressly adopts in whole or in part the statement of findings, conclusions, and reasons of the Board. Where the Secretary adopts the Board's statement of findings, conclusions, and reasons, publication and indexing under the terms of § 724.814 is not required where such would duplicate existing publication and indexing of the same material.

(d) Requests from petitioners for Secretarial review of a Board decision under the provisions of paragraph (b)(1) of this section must be addressed to the Director, Naval Council of Personnel Boards, and must be received within 25 days of the date on which the notification of the decision of the Board was mailed to the petitioner. Requests received subsequent to that date shall not be considered. The Director shall screen these requests and refer to the Secretary only those cases in which the required preliminary showing has been made. (See § 724.902(1).)

(e) Those cases described in paragraphs (b) (2), (3), (4), and (5) of this section shall all be forwarded by the Director to the Secretary for review and final decision.

§ 724.322 Scheduling of discharge reviews.

(a) When a petitioner requests a personal hearing, or to be represented in absentia, the Board shall provide the option of a hearing in Washington, D.C. or at another site within the forty-eight contiguous States.

(b) The Board shall subsequently notify the petitioner and representative (if any) in writing of the hearing time and place. This notice shall normally be mailed approximately sixty days prior to the date of the hearing. If the petitioner elects, this time limit may be waived and an earlier date set.

(c) When a petitioner requests documentary review, the Board shall schedule the review as soon as practicable in an ordered sequence.

§ 724.323 Hearing sites.

(a) The Board shall be permanently situated, together with its administrative staff, in the Washington, D.C., area. The Board shall conduct regular hearings and the majority of its documentary reviews at this, its permanent office. Petitioners located within a radius of three hundred miles from Washington, D.C., shall normally be required to present their cases in Washington, if they request a hearing.

(b) In addition, as permitted by available resources, the Board shall travel to other selected sites within the contiguous 48 States for the purpose of conducting hearings. The selection of hearing sites and the frequency of visits shall be predicated on the number of requested hearings pending within a region and the availability of resources. Petitioners located within a radius of three hundred miles from sites selected for Traveling Board hearings shall normally be required to present their cases to the Board

at the selected sites, if they have requested hearings. An exception shall be made if the petitioner requests a hearing in Washington, DC.

(c) If a petitioner who has requested a hearing declines without justifiable cause to present a case to the Board when the Board is sited within three hundred miles of the petitioner's residence as stated in the petition, the petitioner shall be deemed to have waived any right to a personal hearing. Instead, the Board shall conduct a documentary review of the discharge and the decision of the Board shall be based on that review.

**§ 724.324 Traveling Board support and augmentation by Regular and Reserve activities.**

(a) When the Board travels for the purpose of conducting hearings, it shall normally select as review sites Navy and Marine Corps installations in the area visited.

(b) Composition of the Board for these hearings shall normally consist of two members from Washington plus three augmentees from nearby regular and reserve Navy and Marine Corps resources.

(c) Navy and Marine Corps activities in the geographical vicinity of selected review sites shall provide administrative support and augmentation to the Board during its visit where such assistance can be undertaken without interference with mission accomplishment. The Board shall coordinate requests for augmentees and administrative support through Commandant of the Marine Corps, Chief of Naval Reserve, commandants of naval districts and directors of Marine Corps districts as appropriate.

(d) The administrative staff in Washington shall undertake all arrangements for Traveling Board visits and shall process associated review documents.

**§ 724.325 Court-martial specifications, presumption concerning.**

Relevant and material facts stated in a court-martial specification:

(a) To which the petitioner pleaded guilty, or

(b) Of which the petitioner was found guilty and the finding was not subsequently overturned by reviewing authority, or

(c) In the face of which the petitioner requested a discharge for the good of the service to avoid trial by court-martial shall be presumed by the Board as established facts. Excepted to the foregoing are instances where there exists manifest error, or where the petitioner shall show to the satisfaction of the Board, or it shall otherwise appear, that arbitrary or coercive action was taken against the petitioner at the time which was not apparent to the reviewing authority from the record.

**§ 724.326 Previous Discharge Review Decisions/Dispositions.**

The Naval Discharge Review Board is not constituted as a precedential body. Accordingly, decisions and dispositions in previous discharge reviews shall not

be used as or constitute binding precedents or binding guidance in subsequent discharge reviews.

**Subpart D—Principal Elements of the Navy Department Discharge Review System**

**§ 724.401 Petitioners.**

As defined in § 724.108.

**§ 724.402 Naval Discharge Review Board.**

**§ 724.403 Director, Naval Council of Personnel Boards.**

As defined in § 724.102.

Exercises administrative control of the Naval Discharge Review Board. Exercises oversight of the naval discharge review process. Performs preparatory screening of requests for Secretarial review of Board decisions. See Subpart I of this Part.

**§ 724.404 Commandant of the Marine Corps or the Chief of Naval Personnel.**

Personnel managers of the Marine Corps and the Navy, responsible for providing limited support to the Naval Discharge Review Board and for implementation of departmental discharge review decisions. See Subpart J of this Part.

**§ 724.405 Chief, Bureau of Medicine and Surgery.**

Custodian of Navy and Marine Corps health records. Responsible for providing limited support to the Naval Discharge Review Board. See Subpart J of this Part.

**§ 724.406 Chief of Naval Reserve.**

Manages Naval Reserve resources. Responsible for providing limited support within available resources to the Naval Discharge Review Board. See Subpart J of this Part.

**§ 724.407 The Secretary.**

The Secretary of the Navy is:

(a) The source of the discretionary authority that is delegated to the Director, Naval Council of Personnel Boards, in discharge review matters

(b) The final authority within the Department of the Navy in discharge review matters.

**Subpart E—Rights and Procedures Applicable to Petitions for Naval Discharge Review**

**§ 724.501 Rights of a petitioner.**

An individual has the right:

(a) To a review of discharge, if other than the result of a general court-martial, provided a petition is submitted within fifteen years subsequent to the date of the issuance of the discharge;

(b) To a personal hearing either in the Washington, D.C., area or before the Traveling Board;

(c) To a documentary review in absentia;

(d) To be accompanied by a representative during a hearing;

(e) To present evidence in person or by affidavit;

(f) To present witnesses;

(g) To present other information in sworn or unsworn statements;

(h) To examine prior to the time of a scheduled hearing all official documents which will be considered by the Board in the review;

(i) To privacy in accordance with the Right to Privacy Act of 1974 (5 U.S.C. 552a);

(j) To access to the discharge review case index in accordance with § 724.814;

(k) To the record of the review in accordance with § 724.811.

**§ 724.502 Procedures for petition for discharge review.**

(a) The petition for review must be submitted using Application for Review of Discharge or Dismissal from the Armed Forces of the United States, DD Form 293 (Appendix D of this Part). It must be personally signed by the petitioner. In the event the discharged individual is deceased or incompetent, the form must be signed by an authorized individual as discussed in § 724.108.

(b) The petition must be accompanied by:

(1) A copy of the certificate of discharge, if available;

(2) Statements by the petitioner specifically presenting contentions and/or the issues of facts, law or discretion which form the basis for the petition;

(3) A copy of the Armed Forces of the United States Report of Transfer or Discharge (DD-214), if available;

(4) Legal proof of death or incompetency and certification of relationship in applicable cases;

(5) Other statements, affidavits, depositions, documents and information desired by the petitioner to be considered by the Board.

(c) The importance of the completeness of the petition is emphasized. Without evidence to the contrary, naval discharges are presumed to be just and properly administered. Petitioners must present complete arguments in support of their petitions if the Board is to consider the petitioner's position as well as the official records of the Department of the Navy. Where a petition is considered to lack information essential to a competent review, it will be returned, requesting such information, before the review will proceed.

(d) Correspondence relating to review of naval discharges should be addressed to:

Naval Discharge Review Board, Suite 905, 801 North Randolph St., Arlington, Va. 22203, phone: 202-692-4991.

**§ 724.503 Response to petition for discharge review.**

(a) The petitioner shall be sent an acknowledgment of receipt of the petition.

(b) In the event a hearing is requested, the petitioner shall be notified of the time and place of the hearing and shall be advised of the availability of the offi-



cial documents to be considered by the Board.

(c) In the event a documentary review is requested, the petitioner shall normally receive no further communication from the Board until notified of the decision in the case.

**Subpart F—Naval Discharge Review Board Mission and Functions**

**§ 724.601 General.**

The Board is a component of the Naval Council of Personnel Boards and has its offices located at their headquarters in the Washington, DC area. The Board conducts documentary reviews and personal hearings at its Washington area offices and also undertakes personal hearings on a travel basis at selected sites within the 48 contiguous states. Regional site selection is predicated on the number of pending petitions accumulated from a given geographical area and the resources available to support distant hearings. The Board does not maintain facilities other than at its Washington area offices.

**§ 724.602 Mission.**

To decide, in accordance with standards of naval law and discipline, whether a discharge or dismissal from the Naval Service is proper and equitable, or whether it should be changed.

**§ 724.603 Functions.**

(a) Meet as frequently as necessary to review expeditiously naval discharges referred to the Board.

(b) Meet at locations within the 48 contiguous states as determined appropriate on the basis of the numbers of petitions received from associated geographical areas and of available resources and facilities.

(c) Review petitions for change of discharges.

(d) In consonance with directives of higher authority and the policies set forth in this Part, grant or deny change of discharges.

(e) Promulgate decisions in a timely manner.

(f) Maintain a system of records.

(g) Maintain liaison in discharge review matters with:

(1) The Commandant of the Marine Corps.

(2) The Chief of Naval Personnel.

(3) The Judge Advocate General of the Navy.

(4) Chief of Naval Reserve.

(5) Chief of Bureau of Medicine and Surgery.

(6) Veterans representation groups.

(7) Discharge review boards of the other services.

(h) Monitor the performance of the departmental discharge review system. Make recommendations for changes and improvements. Take action to avoid delays and processing of individual discharge review actions.

(i) Protect the privacy of individuals whose records are reviewed.

(j) Submit recommendations to the Secretary of the Navy on cases which

because of their special nature or circumstances are referred to him for final decision.

(k) Maintain for public access a reading file and associated index of records of Board proceedings in all reviews undertaken subsequent to July 1, 1975. Personal identifications shall be removed from the records in conformance with the Right to Privacy Act of 1974 (5 U.S.C. 552a).

**Subpart G—Organization of the Naval Discharge Review Board**

**§ 724.701 Composition.**

The Board shall be composed of five members. Normally these shall be career military officers; however, officers of the inactive Navy and Marine Corps Reserve may serve as members when designated to so act by the Director, Naval Council of Personnel Boards.

(a) The President of the Board shall be a Navy or Marine officer in the grade of O-6 or above, designated by the Director, Naval Council of Personnel Boards.

(b) The remaining membership shall normally be not less than O-4 grade with preference being given to more senior grades.

(c) Board members shall be designated from the following sources:

(1) Officers performing duty with the Naval Council of Personnel Boards.

(2) Officers nominated by the Commandant of the Marine Corps.

(3) Officers nominated by the Chief of Naval Reserve, on request.

(4) Officers nominated by commandants of naval districts, on request.

(5) Officers nominated by directors of Marine Corps districts, on request.

(d) At least three of the five members of the Board shall belong to the service from which the petitioner whose case is under review was discharged or dismissed.

(e) Individual membership in the Board may vary within the limitations of the prescribed composition.

**§ 724.702 Executive management.**

The administrative affairs of the Board shall be managed by the Executive Secretary. This responsibility shall include schedules, records, correspondence and issuance of Board decisions.

**§ 724.703 Recorders.**

The Board shall be assigned a number of Navy and Marine officers who shall act as recorders for discharge review sessions. The number of recorders assigned shall be consistent with Board case loading. These officers shall normally be of the grade O-4 or O-5.

**§ 724.704 Counsel for the Board.**

The Board shall function normally without the immediate attendance of legal counsel. In the event that a legal opinion or review is deemed appropriate by the President of the Board, such shall be obtained routinely by reference to the senior Judge Advocate assigned to the Office of the Director, Naval Council of Personnel Boards. In unusual circum-

stances, the Traveling Board may request advice from the Officer in Charge of the nearest Naval Legal Services Office.

**Subpart H—Procedures of the Naval Discharge Review Board**

**§ 724.801 Matter to be considered in discharge review.**

(a) In the process of its review of discharges, the Board shall examine available records of the Department of the Navy, together with such information as may be presented by the petitioner and/or representative. Minimum matter for Board consideration shall normally consist of:

(1) The petition for discharge review;

(2) Briefs/written statements accompanying the application or presented during hearings;

(3) Testimony presented during hearings;

(4) Service and health records;

(5) A brief of pertinent facts extracted from the service and health records, prepared by the Board recorder.

If minimum documentation is not available, the Executive Secretary shall refer the case to the Director, Naval Council of Personnel Boards, for guidance.

(b) Analysis/decisional briefs of all available facts pertinent to each review shall be prepared by Board recorders using NAVSO Form 1900/5C (3-77) (Appendix D of this Part).

(c) The scope of analysis by the Board shall include as a minimum consideration of the objectives of discharge review stated in § 724.301 and the parameters stated in § 724.302.

**§ 724.802 Issues/contentions raised by the petitioner.**

The Board shall consider the issues or contentions raised by the petitioner, according approximate weight to each during Board deliberations.

**§ 724.803 Findings.**

The Board shall make findings of facts in each discharge review which shall include:

(a) The date, type and reason of the discharge/dismissal and the authority under which it was issued;

(b) The circumstances and character of the petitioner's service as extracted from service records, health records and information provided by other government authority or the petitioner.

(c) A brief of relevant information developed from testimony, when the review involves a discharge review hearing.

(d) Reference to petitioner's written brief, if any.

(e) Reference to advisory opinions, if any. Factual information and/or advice from advisory opinions relied upon for final decision shall normally be set forth verbatim.

Care must be taken to insure that the findings, constructed as prescribed herein, include those factors required by applicable service regulations to be considered for the determination of the

character and reason for the discharge in question where such factors are a basis for denial of any of the relief requested by the petitioner. So constituted, the findings comprise the basis for the conclusion.

#### § 724.804 Conclusions.

(a) On the basis of its findings, the Board shall prepare conclusions. They shall be briefly stated and shall address the relevant issues raised by the petitioner, except that they need not address issues which, even if the petitioner's claims were true, would not result in the granting of further relief to the petitioner. However, all claims by the petitioner that statutory, regulatory and/or constitutional provisions were violated, must be addressed. Such other nonfrivolous claims made by the petitioner, which in the opinion of the Board would warrant greater relief than that afforded petitioner by the Board's decision if resolved in the petitioner's favor, must also be addressed.

(b) Conclusions shall be accompanied by a brief statement of the rationale which is underlying.

#### § 724.805 Decisions.

On the basis of its conclusions, the Board shall record its decision as to whether a discharge should remain unchanged, or be changed. The nature of any change shall be clearly specified.

#### § 724.806 Implementation of review decisions.

A written notification addressed to the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate, shall be issued to implement the decision of the Board, or that of higher authority, in each discharge review case.

#### § 724.807 Decision process.

(a) The Board shall meet in plenary session to review discharges.

(b) In the event the petitioner does not appear in person, or is not represented in absentia, the Board shall review the discharge on the basis of available official records and of information presented by or on behalf of the petitioner.

(c) In the event the petitioner appears in person or is represented in absentia, the Board shall hear testimony by or on behalf of the petitioner and shall consider official records and other available information.

(d) Decisions shall be reached in formal voting.

(e) Voting shall be conducted in closed session, a majority of the five voting members' votes constituting the Board decision. The President shall have a single vote.

(f) Details of the deliberations of the Board are privileged information. They shall not be divulged.

(g) Members of the Board are authorized access to the Secretary of the Navy where such access is necessary to the proper conduct of the discharge review process.

#### § 724.808 Issuance of decisions following discharge review.

Notification of decisions following review shall be issued to the petitioner and to service personnel managers.

(a) Notification to petitioners shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision together with a copy of the form NAVSO 1900/5C (and appendices thereto) executed in connection with the review.

(b) Notification to the Commandant of the Marine Corps and the Chief of Naval Personnel shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall normally be issued en bloc and shall bear the personal signature of the Executive Secretary of the Board in certification of completeness and accuracy. Delivery of en bloc notifications shall normally be via interoffice mail.

(c) Decisions of the Director, Naval Council of Personnel Boards, in appeals, and of the Secretary of the Navy in cases referred to him for decision, shall be issued by the Board in a manner similar to decisions of the Board.

#### § 724.809 Conduct of discharge review hearings.

(a) Discharge Review Board personal hearings shall be conducted in open session unless, in the opinion of the President, an open session would be prejudicial to the interests of the petitioner or the government; or a closed hearing is requested by the petitioner.

(b) The President shall preside over the hearing. He shall convene, recess and adjourn the Board as appropriate. He shall rule on matters of procedure. He shall maintain an atmosphere of dignity and decorum at all times.

(c) Personal hearings shall be conducted with the objective of eliciting all the facts bearing on the case. Witnesses shall be encouraged to contribute to this objective. Board members are responsible for eliciting all the facts necessary for a full and fair hearing, whether or not the petitioner is accompanied by a representative.

(d) Each board member shall act under the oath or affirmation set forth in Appendix C of this Part.

(e) Admission of evidence and testimony. (1) Petitioners undergoing personal hearings shall be permitted to introduce witnesses, documents, sworn or unsworn statements or other information in their behalf.

(2) Petitioners may also make oral or written arguments personally and through representatives.

(3) Petitioners and witnesses introduced by them may be questioned by the Board regarding information or testimony submitted by them.

(4) All testimony shall be taken under oath unless otherwise specifically requested by the petitioner.

(5) The Discharge Review Board shall consider all information presented to it by the petitioner. In addition, the Board shall consider available service and

health records together with such other records as may be in the files of the Department of the Navy that relate to the issues before the Board.

(f) The Board is an administrative fact-finding body. Its hearings shall not be adversary in nature and examination/cross-examination procedures shall not apply. Similarly, trial court rules of evidence shall not govern its fact-finding procedures. The President shall, however, advise the petitioner and/or representative to limit presentation to a concise development of information which is material and relevant to circumstances surrounding the discharge.

(g) When the Board considers that professional or technical questions are not adequately resolved in the testimony and documents before it, appropriate advice shall be sought from bureaus and offices of the Department of the Navy prior to final consideration and decision. (See § 724.803(e) and § 724.810(a)(5)).

#### § 724.810 Records of board proceedings.

(a) A complete record of Board proceedings shall be compiled for each review action. This record of proceedings shall include as a minimum:

(1) The petition,  
(2) In the case of personal hearings, a verbatim record of the hearing on electromagnetic tape,

(3) Affidavits, papers and documents, other than service and health records, which were considered by the Board,

(4) All briefs and written arguments prepared and filed in the case,

(5) Advisory opinions considered by the Board,

(6) The Record of Review of Discharge (NAVSO 1900/5C), stating petitioner's claims, Board findings, conclusions with reasons, and associated decision, together with minority reports if applicable,

(7) Reference to the document notifying the cognizant personnel manager of the discharge review action in each case.

(b) The record of proceedings shall not address matter which is beyond the scope of the Board's authority. Such matter shall, if necessary, be addressed in separate action.

(c) The record of proceedings shall state the membership of the Board. In a unanimous decision the record shall be signed by the President and authenticated by the recorder of the Board. In a split decision, the minority report shall additionally be signed by the minority members.

#### § 724.811 Final disposition of the record of proceedings in discharge review.

(a) The original Record of Review of Discharge (NAVSO 1900/5C) and all appendices thereto shall in all cases be incorporated in the service record of the petitioner and the service record shall be returned to the custody of the National Personnel Records Center, St. Louis, Missouri, via the service personnel manager if applicable.

(b) A case file consisting of copies of the application, findings, conclusions, decisions, notification of Board action and hearing transcripts if any shall be maintained for reference by the Board for one year, after which it shall be transferred to the Washington National Records Center, Suitland, Maryland. Case files retained at the Washington National Records Center shall be destroyed three years following transfer to the Center.

(c) Upon written request by the petitioner, guardian or other authorized representative, a copy of the complete record of proceedings shall be furnished providing the request is received prior to final disposition.

**§ 724.812 Records of discharge review hearings.**

A verbatim record of each discharge review hearing shall be made. Unless specifically directed otherwise, this record shall be carried on electromagnetic tape and retained as part of the case file.

**§ 724.813 Petitioner examination of documents to be considered during discharge review.**

(a) The documents assembled for consideration by the Board in review of a discharge shall be held available upon request for examination by the petitioner or representative.

(b) Such examination shall be arranged sufficiently beforehand so as not to delay a scheduled hearing.

(c) The Board is not authorized to provide to the petitioner or representative copies of any documents that are under the cognizance of another government department, office or activity. Application for such information must be made by the petitioner to the cognizant authority.

**§ 724.814 Availability of Naval Discharge Review Board documents for public inspection and copying.**

(a) Although discharge review decisions are not precedential, following the issuance of decisions in each case, the Board shall make available for public inspection and copying the statement of issues/contentions, findings, conclusions and reasons, record of Board members' votes together with the decision and minority opinion, if one exists, associated with the case. If not otherwise listed in the statement of findings, conclusions, and reasons, a list of contentions and the issues of fact, law, or discretion presented by the petitioner will be made public with the decision.

(b) Identifying details of the petitioner and other persons shall be deleted by the Board from all documents made available for public inspection and copying to the extent required to prevent a clearly unwarranted invasion of privacy or display of information derogatory to an individual.

(c) Written justifications, which are to be made available for public inspection, shall be made for all other deletions.

(d) Documents made available for public inspection and copying shall be made available at a reading room within the Washington, DC area. They shall be indexed so as to enable the public to

identify those cases that may be similar in issue together with the circumstances under and/or reasons for which the Board and/or the Secretary of the Navy have granted or denied relief.

(e) The reading file index shall include the case number, the date, character of, reason for and authority for the discharge. It shall further include the decisions of the Board/reviewing authority if any and the issues addressed in the findings, conclusions and reasons.

(f) The index shall be made available at sites selected for Traveling Board hearings for such periods as the Board is present and in operation. Applicants at Traveling Board hearing sites shall be informed in notices of hearings of the availability at the sites of the index for inspection and copying.

(g) The Board shall publish indexes quarterly. They shall, upon request, be distributed by sale or otherwise.

**Subpart I—Director, Naval Council of Personnel Boards**

**§ 724.901 Mission.**

To oversee and administer discharge review procedures within the Department of the Navy.

**§ 724.902 Functions.**

(a) Under the Secretary of the Navy, exercise primary cognizance within the Department of the Navy for matters relating to discharge review.

(b) Make recommendations to the Secretary of the Navy regarding the organization, tasking and resources of the Board and its associated administrative support.

(c) Supervise and direct the activities of the Board.

(d) Submit recommendations to the Secretary of the Navy regarding policy and procedures for discharge review.

(e) Provide administrative and clerical support for the Board.

(f) Maintain appropriate liaison with discharge review activities in other services.

(g) Maintain coordination with the Commandant of the Marine Corps and the Chief of Naval Personnel in matters associated with discharge review.

(h) Inform the Secretary of the Navy of matters of interest to him.

(i) Screen requests for Secretarial review of Board decisions.

(1) Return without further action those which fall outside the limitations stated in § 724.321(b)(1). (See § 724.321(d).)

(2) In those instances where such cases are returned, or in those instances where cases are forwarded with any recommendation as to disposition, a statement of the Director's findings, conclusions, and reasons, in the same manner as required in Subpart H of this Part, shall accompany the Director's action, except where he expressly adopts in whole or in part the Board's statement of findings, conclusions, and reasons, publication and indexing under the terms of § 724.814, is not required where such would duplicate existing publication and indexing of the same material.

(3) In those cases where the petitioner's request appears to contain new, substantial, relevant information not previously available to the petitioner, the request will be referred to the Board for decision in accordance with § 724.316.

(j) Forward, for Secretarial review and decision, cases described in paragraphs (b) (2), (3), (4), and (5) of § 724.321. A statement of the Director's findings, conclusions, and reasons, in the same manner as required in Subpart H of this Part, shall accompany the Director's action, except where he expressly adopts in whole or in part the statement of findings, conclusions, and reasons of the Board. Where the Director adopts the Board's statement of findings, conclusions, and reasons, publication and indexing under the terms of § 724.814 is not required where such would duplicate existing publication and indexing of the same material.

(k) Maintain a system of records, including as a minimum:

(1) Records specified for the Board as stipulated in the procedures prescribed in Subpart H of this Part.

(2) Records required for the administration of military and civilian personnel.

(3) Files of correspondence received and issued.

(4) A public reading file and associated indexes updated quarterly.

(l) In conformance with SECNAV INST 5211.5A (Subparts F and G of Part 701 of this Title), protect the privacy of individuals in connection with discharge review.

(m) Assure that Board functions are administered in accordance with the Right to Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

(n) Prepare and submit to the Secretary of the Navy an annual report covering the operations of the Board.

(o) Establish billet/position assignment criteria for the Board.

(p) Propose to the Secretary of the Navy changes to the Department of the Navy Manual for Discharge Review.

(q) Convene the Board as authorized by the Secretary of the Navy, remove or add members to the Board from personnel detailed to serve on the Naval Council of Personnel Boards, or from personnel otherwise made available.

(r) Direct the movements of the Traveling Board on the basis of regional hearing requests.

**Subpart J—Responsibilities in Support of the Board**

**§ 724.1001 Responsibility.**

The Commandant of the Marine Corps, Chief of Naval Personnel, Chief of Naval Reserve, Chief of the Bureau of Medicine and Surgery and chiefs of other bureaus and offices of the Department of the Navy shall provide limited support to the naval discharge review process.

**§ 724.1002 Functions of the Commandant of the Marine Corps and Chief of Naval Personnel.**

(a) Provide and facilitate access by the Board to service records and other

data associated with performance of duty of petitioners.

(b) Advise the Board of developments in personnel management which may have a bearing on discharge review judgments.

(c) Implement the discharge review decisions of the Board and those of higher authority within respective areas of cognizance.

(d) Include the Board's record of review in the service record of the petitioner in each case.

(e) Where appropriate, recommend cases for Board review on its own motion.

(f) Provide qualified personnel as Board members, recorders, and administrative staff.

(g) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

(1) The right to a review of his or her discharge under the provisions of Title 10 U.S.C. 1553, and

(2) The procedures for petitioning for such a review.

(h) Provide Navy and Marine units and activities with information on the mission of the Naval Discharge Review Board through entries in appropriate personnel administrative directives.

§ 724.1003 Functions of the Chief of the Bureau of Medicine and Surgery.

Provide and facilitate access by the Board to health records of petitioners.

§ 724.1004 Functions of the Commandant of the Marine Corps and Chief of Naval Reserve (refer to § 724.324).

(a) Upon request and within available resources, provide qualified reservists to serve as members of the Board.

(b) Upon request, provide appropriate accommodations to the Traveling Board for purposes of conducting hearings at Navy and Marine Corps Reserve Centers.

§ 724.1005 Functions of the Commandants of Naval Districts and Directors of Marine Corps Districts (refer to § 724.324).

Upon request and within available resources, provide administrative support and augmentation to the Traveling Board.

APPENDIX A.—Methods by which individuals may be involuntarily separated from the Naval Service (other than by reason of being physically unfit)

Category	Method	Called	Discharge certificate/type	Reference	Remarks
Commissioned officer (USN/USNR).	Sentence of GCM.	Dismissal.	No.	BUPERSMAN 3850100-10.	Receives letter from SECNAV vice discharge certificate.
USN Officer (with less than 3 yr).	Board of officers.	Revocation of commission.	Yes (honorable, general, other).	10 U.S.C. 6392, SECNAV INST 1920.6.	Only applies to USN officer with less than 3 yr as a regular. No authority to board officer with more than 3 yr as USN officer.
USNR officer.	do.	Discharge.	do.	10 U.S.C. 1162, 10 U.S.C. 1163, SECNAVINST 1920.6.	Very limited exceptions permit discharge without board.
Commissioned officer (USN/USNR).	Secretarial action (acting for President) without board.	Dropping from rolls.	No.	10 U.S.C. 1161 (USN), 10 U.S.C. 1163 (USNR).	Receives letter from SECNAV vice discharge certificate. Requires 3 mo UA or civilian conviction and sentence to penitentiary. In case of reservists, only requires Secretarial vice Presidential action.
Permanent regular warrant officer.	Board of officers.	Termination of appointment.	Yes (honorable, general, other).	10 U.S.C. 1165, 10 U.S.C. 1166.	Depending on length of service, may result in his reversion, retirement, or separation with or without pay.
Temporary warrant officer.	Secretarial action (acting for President).	Termination of appointment.	No.	10 U.S.C. 5296.	Board generally not required, may be under limited circumstances; member reverts to permanent status and may be further processed in such status.
Warrant officer (W-1).	Sentence of GCM.	Dismissal.	Yes (DD).	MCM, par. 1265.	
Do.	Secretarial action (acting for President).	Dropping from rolls.	No.	10 U.S.C. 6408.	Same remarks as for dropping from the rolls of a commissioned officer.
Do.	do.	Dismissal.	No.	10 U.S.C. 6408.	Must be in time of war.
Midshipman (USN or other MIDN on active duty).	Sentence of GCM.	do.	No.	BUPERSMAN 3850100-10, Navy Regulations art. 0901-1.	Receives letter from SECNAV vice discharge certificate.
Midshipman USN.	Secretarial action.	do.	Yes (honorable) (DD 214 only).	10 U.S.C. 6961.	Based upon recommendation of superintendent that MIDN's continued presence is contrary to best interests of Naval Service.
Do.	do.	Discharge.	do.	10 U.S.C. 6962.	Based upon recommendation of superintendent for inaptitude or unsatisfactory conduct. May be required to serve on active duty as enlisted reservist LAW 19 U.S.C. 6959. Whether or not required to serve will depend on circumstances, but generally not called to active duty except in last 2 yr. If enlisted service required, DD 214 only after completed enlisted service. Discharge from USNA and USN unless academic board recommends otherwise. Generally not called to active duty as enlisted. Prior enlistees with no further service requirements also receive discharge certificate.
Do.	Academic deficiency.	do.	Yes (honorable) (usually only DD 214).	10 U.S.C. 6963.	USNR midshipmen have an underlying reserve status. Personnel being disenrolled during last 2-yr will be called to active duty and not issued discharge until completion of enlisted service.
Midshipman USNR (and advanced college program students).	CNP or Secretarial action.	Disenrollment.	Yes (honorable) (DD 214 only).	10 U.S.C. 2107, 10 U.S.C. 2165.	
Enlisted.	Sentence of GCM.	Discharge.	Yes (DD, BCD).		
Do.	Sentence of SPCM.	do.	Yes (BCD).		
Do.	Board action.	do.	Yes (honorable, general, other).	BUPERSMAN 3420185.	Misconduct.
Do.	do.	do.	Yes (honorable, general).	BUPERSMAN 3420184.	Unsuitability. Board only if more than 8 yr service.
Do.	Command recommendation.	do.	do.	do.	Unsuitability. No board if less than 8 yr.
Do.	CNP action.	do.	do.	BUPERSMAN 3850220.	Convenience of the Government.
Enlisted (USNR).	Secretarial action.	Dropping from rolls.	No.	10 U.S.C. 1163.	Receives letter from SECNAV vice discharge. This statute applies to all reserves, not just officers. Only requires Secretarial/Vice Presidential action.
Enlisted.	Good of the Service at individual's request.	Discharge.	Yes (general, other).	BUPERSMAN 3420270.	At individual's request to GCM authority to escape trial by court-martial.
Commissioned officer (USMC/USMCR).	Sentence of GCM.	Dismissal.	No.	10 U.S.C. 1161 (USMC), 10 U.S.C. 1163 (USMCR).	Receives letter from SECNAV vice discharge certificate.
USMC officer (with less than 3 yr).	Board of officers.	Revocation of commission.	Yes (Honorable, General, other) and letter of revocation signed by SECNAV.	10 U.S.C. 6392, SECNAV INST 1920.6.	Only applies to USMC officer with less than 3 yr as a regular. No authority to board officer with more than 3 yr as USMC officer. Very limited exceptions permit revocation without board.
USMCR officer.	do.	Discharge.	Yes (honorable, general, other).	10 U.S.C. 1162, 10 U.S.C. 1163, SECNAVINST 1920.6.	Very limited exceptions permit discharge without board.
Commissioned officer (acting for President without board).	Secretarial action (acting for President) without board.	Dropping from rolls.	No.	10 U.S.C. 1161 (USMC), 10 U.S.C. 1163 (USMCR), SECNAVINST 1920.6.	Receives letter from SECNAV vice discharge certificate. Requires 3 mo UA or civilian conviction and sentence to penitentiary. In case of reservists, only requires Secretarial vice Presidential action.

Category	Method	Called	Discharge certificate/type	Reference	Remarks
Permanent regular warrant officer.	Board of officers	Termination of appointment.	Yes (honorable, general, other).	10 U.S.C. 1165, 10 U.S.C. 1166, MARCORSEPMAN 8008.	Depending on length of service, may result in his reversion, retirement, or separation with or without pay.
Temporary warrant officer.	Secretarial action (acting for President).	do.	No.	10 U.S.C. 5596	Board generally not required, may be under limited circumstances; member reverts to permanent status and may be further processed in such status.
Warrant officer (W-1).	Sentence of GCM.	Dismissal.	No.	MCM, par. 126d.	Letter of dismissal issued in lieu of discharge certificate.
Do.	Secretarial action (acting for President).	Dropping from rolls.	No.	10 U.S.C. 6408.	Same remarks as for dropping from the rolls of a commissioned officer.
Do.	do.	Dismissal.	No.	do.	Must be in time of war.
Enlisted.	Sentence of GCM.	Discharge.	Yes (DD, BCD).	JAGMAN, ch. 1, MARCORSEPMAN 8006, MARCORSEPMAN 8007.	
Do.	do.	do.	Yes (BCD).	JAGMAN, ch. 1, MARCORSEPMAN 8006.	Misconduct.
Do.	Board action.	do.	Yes (honorable, general, other).	MARCORSEPMAN 8017.	
Do.	do.	do.	Yes (honorable, general).	MARCORSEPMAN 8016, MARCORSEPMAN 8023.	Unsuitability; board only if more than 8 yr service.
Do.	Command recommendation.	do.	do.	MARCORSEPMAN 8018.	Unsuitability; no board if less than 8 yr.
Do.	CMC action.	do.	do.	MARCORSEPMAN 8012.	Convenience of the Government.
Enlisted (USMCR).	Secretarial action.	Dropping from rolls.	No.	10 U.S.C. 1163	Receives letter from SECNAV vice discharge. This statute applies to all reserves, not just officers. Only requires Secretarial vice Presidential action.
Enlisted.	Secretarial action and board action.	Discharge.	Yes (honorable, general).	MARCORSEPMAN 8024.9	If board recommends retention but discharge authority believes case warrants discharge, case may be forwarded to SECNAV for decision.
Do.	Good of the Service at individual's request.	do.	Yes (general, other).	MARCORSEPMAN 8021.	At individual's request to GCM authority to escape trial by court-martial.

APPENDIX B—POLICY STATEMENTS BY THE SECRETARY OF DEFENSE—ADDRESSING CERTAIN CATEGORIES OF DISCHARGES

Secretary of Defense memorandum of August 13, 1971, to The Secretaries of the Military Departments, The Chairman, Joint Chiefs of Staff; Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users:

"Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

"Accordingly, each Secretary of a Military Department, acting through his Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

"The statute of limitations for review of discharges within the scope of this policy will be in accordance with 10 United States Code 1553.

"This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971."

Secretary of Defense memorandum of April 28, 1972, to Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff; Subject: Review of Punitive Discharges Issued to Drug Users:

"Reference is made to Secretary Packard's memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 1971,

subject: 'Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users.'

"My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

"It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issued solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

"Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, Sections 874(b), 1552 and 1553.

"This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

"Former service members requesting a review will be notified of the results of the

review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized."

APPENDIX C—OATH OR AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation which shall continue in effect throughout service with the Board.

OATH/AFFIRMATION

I, \_\_\_\_\_, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

APPENDIX D.—Principal forms employed by the Naval Discharge Review Board

Attachment	Form	Title
1	DD 293	Application for review of discharge or dismissal from the Armed Forces of the United States.
2	NAVSO 1900/5C	Part 1—Review of discharge (petitioner's issues/contentions; findings; summary of service; medical data). Part 2—Review of discharge (continuation of part 1). Part 3—Review of discharge (decision; membership; signatures). Part 4—Review of discharge (minority conclusions/reasons when appropriate; signatures). Part 5—Review of discharge (secretarial decision when appropriate).
3	Letter	En bloc notification of decision to Commandant, Marine Corps (no change).
4	Letter	En bloc notification of decision to Commandant, Marine Corps (no change).
5	Letter	En bloc notification of decision to Chief of Naval Personnel (change).
6	Letter	En bloc notification of decision to Chief of Naval Personnel (no change).

APPLICATION FOR REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES		OMB APPROVED 22-R-0014	
DATA REQUIRED BY THE PRIVACY ACT OF 1974			
AUTHORITY: 10 U.S.C. 1553, Executive Order 9397, 22 Nov 43 (SSN)			
PRINCIPAL PURPOSES: To apply for upgrading of type of discharge issued.			
ROUTINE USES: Placed in applicant's file. Used in applicant's case in determining the relief sought. To compare facts presented with evidence in the record.			
DISCLOSURE: Voluntary. If information is not furnished, applicant may not secure benefits from the Board.			
SEE INSTRUCTIONS ON REVERSE BEFORE COMPLETING THIS FORM. TYPE OR PRINT.			
BRANCH OF SERVICE			
<input type="checkbox"/> ARMY <input type="checkbox"/> NAVY <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> COAST GUARD <input type="checkbox"/> AIR FORCE			
1. LAST NAME - FIRST NAME - MIDDLE INITIAL		2. SERVICE NO./SSN	3. SEPARATION RATE OR GRADE
4. SEPARATION UNIT AND LOCATION		5. NATURE OF DISMISSAL OR TYPE OF DISCHARGE RECEIVED	6. SEPARATION DATE
7. I REQUEST THE FOLLOWING CORRECTIVE ACTION BE TAKEN: (See instructions)			
<input type="checkbox"/> UPGRADE DISCHARGE TO: <input type="checkbox"/> HONORABLE <input type="checkbox"/> GENERAL <input type="checkbox"/> CHANGE REENLISTMENT CODE (Air Force Only)			
<input type="checkbox"/> CHANGE DISCHARGE REASON (Explain) _____ <input type="checkbox"/> OTHER (Explain) _____			
8. REASON FOR REVIEW OF DISCHARGE (State in your own words the reasons you feel your discharge should be changed -- use additional sheets if necessary): (See instructions)			
9. SUPPORTING DOCUMENTS (See instructions)			
10. PERSONAL APPEARANCE: <input type="checkbox"/> I DESIRE TO APPEAR BEFORE THE BOARD. (No expense to the GOVERNMENT) (See instructions)			
<input type="checkbox"/> AT WASHINGTON, D.C. <input type="checkbox"/> HEARING EXAMINER (Army Only) CLOSEST TO: _____ (City and State)			
<input type="checkbox"/> BEFORE THE TRAVELING/REGIONAL BOARD CLOSEST TO _____ (City and State)			
<input type="checkbox"/> I DO NOT DESIRE TO APPEAR BEFORE THE BOARD AND HAVE LEFT THE ABOVE BLANK. I DESIRE TO HAVE MY DISCHARGE REVIEWED BASED ON MY MILITARY RECORDS AND WHATEVER DOCUMENTATION I HAVE SUBMITTED.			
11. REPRESENTATIVE:			
<input type="checkbox"/> I DESIRE TO BE REPRESENTED BY, AND AUTHORIZE RELEASE OF MY RECORDS TO: (No expense to the GOVERNMENT) (See instructions)			
NAME:		ADDRESS: (Include ZIP Code)	
<input type="checkbox"/> I DO NOT DESIRE TO BE REPRESENTED AND HAVE LEFT THE ABOVE BLANK.			
I make the foregoing statements as a part of my application with full knowledge of the penalties involved for willfully making a false statement. (U.S. Code, Title 18, Section 1001, formerly Section 80, provides a penalty as follows: A maximum fine of \$10,000 or maximum imprisonment of 5 years, or both.)			
STREET OR RFD		CITY, STATE AND ZIP CODE	
(IF YOU MAKE A CHANGE IN RESIDENCE, NOTIFY THE APPROPRIATE BOARD IMMEDIATELY)			
DATE	SIGNATURE OF APPLICANT		
NOTE: IF VETERAN IS DECEASED OR INCOMPETENT, the application may be signed by a person other than the one whose name appears in block 1 above; indicate status in box below. Legal proof of death or incompetency and satisfactory evidence of the relationship between the discharged person and the petitioner must accompany application.			
<input type="checkbox"/> NEXT OF KIN <input type="checkbox"/> LEGAL REPRESENTATIVE <input type="checkbox"/> SURVIVING SPOUSE			
UPON COMPLETION, MAIL THIS APPLICATION AS FOLLOWS			
ARMY	NAVY & MARINE CORPS	COAST GUARD	AIR FORCE
CO, USARCFAC 9700 Page Blvd St. Louis, MO 63132	Navy Discharge Review Board 801 No. Randolph St. Arlington, VA 22203	Commandant (CED) U.S. Coast Guard Headquarters Washington, DC 20591	National Personnel Records Center, USA (Military Personnel Records) 9700 Page Blvd St. Louis, MO 63132

DD FORM 293  
1 MAR 73

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE AND WILL NOT BE ACCEPTED.

Attachment 1 (1)

## INSTRUCTIONS

**Copy of Military Record.** Should you desire to have copies of your records, you must submit a General Services Administration Standard Form 180 (GS SF 180) before you submit this form. Once this DD Form 293 is submitted, you records will be obtained by the Board. Official records and copies of records obtained by the Board will be available to applicants only at the hearing locations.

**Item 1 thru 6. - Self Explanatory.**

**Item 7.** Indicate the corrective action you are requesting. You must check at least one block and can check more blocks if desired. Due to certain limitations in the Board's authority, the Board cannot: (a) review discharges issued as a result of General Court-Martial (Use DD Form 149); (b) review discharges issued more than fifteen years prior to the application (DD Form 293) submission date; (c) review a Release from Active Duty until a final discharge is issued; (d) change a reenlistment code (except Air Force); (e) change the reason for a discharge from or to physical disability; or (f) determine eligibility for veteran's benefits.

**Item 8.** State here your reasons why you feel your discharge should be changed. Briefly summarize each of your contention (reasons) and/or issues of fact, law, or discretion that you want the Board to address and resolve. Additions or modifications may be made at any time up to the date of review of your case by the Board.

**Item 9.** Evidence not in your official records should be submitted to the Board before hearing date. Review Boards do not locate witnesses nor do they secure evidence for applicants. Legal briefs or counsel submissions should also be submitted in advance of hearing date. Documents that may be helpful are statements, affidavits, and depositions such as: character references; police clearances; educational achievement; exemplary post-service conduct; medical reports; employment record; verification of alcoholism or drug abuse; award of Department of Labor Exemplary Rehabilitation Certificate; explanation of disciplinary problem or discharge problem; brief of counsel arguing error or injustice. Witnesses may appear in person at no cost to the Government.

**Item 10.** If you state on your application that you will appear before the Board in person and fail to do so without previous satisfactory arrangements with the Board, such failure will be considered as a waiver of appearance and your case will be reviewed on the evidence contained in your military record.

**AIR FORCE, NAVY, AND MARINE CORPS:** The Discharge Review Boards meet daily in Washington, D.C., for personal appearance hearings and documentary reviews. If you request a review based on records only or a hearing in Washington, DC, your case will be scheduled there at the earliest date possible. Personal appearance hearings are also scheduled before the Traveling Boards in various cities throughout the 48 contiguous

states as the population of requests on hand requires. If you ask for a hearing before the Traveling Board, it will be scheduled after your case is prepared and when the Traveling Board is next in your area. You will ordinarily not have to travel more than 300 miles for your hearing.

**ARMY:** Panels of the Review Board meet daily in Washington, DC and other locations and on an irregularly scheduled basis at major cities and other smaller metropolitan areas of the U.S. at least once each year. You may appear before the Board in Washington, DC, or in front of a Traveling Panel elsewhere in the U.S. or you may also appear in front of a Hearing Examiner who will video tape testimony for presentation to the Board in Washington, DC. For Hearing Examiners you must be accompanied by counsel or representative. Normally ex-Army members will not have to travel in excess of 200 miles if you are heard by a Traveling Panel or Hearing Examiner. Generally speaking, scheduled cases are heard as follows: (1) Personal Appearance, Washington, DC, within six months; (2) Personal Appearance by Traveling Panel or Hearing Examiner, within twelve months; (3) Representation by counsel or other person/organization only at Washington, DC, within three months; and (4) Without personal appearance or representation, review based on military records and documents submitted by applicant, within 30 days.

**Block 11.** The services do not provide counsel, representation, or evidence for applicant, nor do they defray cost of such under any circumstances. However, certain agencies recognized by the VA, some state, county, and city organizations, private organizations, and some schools of law do provide assistance in presenting your appeal. If you wish to be assisted, you are responsible for obtaining representation and may:

- a. Obtain a lawyer at your own expense.
- b. Contact an appropriate state, county, city, private or law school organization.
- c. Obtain representation from any other agency or individual who is willing to assist you.
- d. Select one of the following organizations which regularly furnish representation at no charge to you. Representatives may or may not be lawyers.
  - (1) American Red Cross
  - (2) American Legion
  - (3) Disabled American Veterans
  - (4) Jewish War Veterans of the U.S.A.
  - (5) Veterans of Foreign Wars

An appearance by your representative will not be scheduled in your absence unless your representative requests it. In this event, if a. or c. apply, power of attorney is mandatory.

Attachment I (2)

## RULES AND REGULATIONS

REVIEW OF DISCHARGE  
 NAVSO 1900/5C (REV. 3-77)  
 SUPERCEDES ALL PREVIOUS EDITIONS  
 PART 1

DEPARTMENT OF THE NAVY  
 NAVAL DISCHARGE REVIEW BOARD

DOCKET NR/ DATE

RECORDER

REVIEW OF DISCHARGE OF ( <i>Name, Rate/Rank, SSN, Corp</i> )		CITY/STATE	
CHARACTER OF DISCHARGE			
DISCHARGE REGULATION		DATE OF ISSUE	
REPRESENTATIVE	PETITIONER PRESENT <input type="checkbox"/> YES <input type="checkbox"/> NO	PROCEEDINGS RECORDED <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE OF REVIEW
PETITIONER'S CONTENTIONS/ISSUES: ( <u>RELEVANT</u> TO JUSTICE AND EQUITY OF THE DISCHARGE)			

## FINDINGS OF FACT

DATE OF THIS ENL	ENLISTED FOR	AGE AT THIS ENLISTMENT	CREDITABLE SERVICE THIS ENLISTMENT ( <i>Year, month, day</i> )	
RATINGS HELD THIS ENLISTMENT		MOS ( <i>USMC</i> )	YRS CIV EDUC	GCT
NIL BEH	PROF	OTA(USN)	PRIOR SERVICE-ACTIVE ( <i>Year, month, day</i> )	
MILITARY DECORATIONS			UNIT/CAMPAIGN/SERVICE AWARDS	
SUMMARY OF SERVICE/FACTS DEVELOPED AT HEARING (IF APPROPRIATE)				

Attachment 2 (1)



REVIEW OF DISCHARGE  
NAVSO 1900/5C (REV. 3-77)  
SUPERCEDES ALL PREVIOUS EDITIONS  
PART 2

DEPARTMENT OF THE NAVY  
NAVAL DISCHARGE REVIEW BOARD

DOCKET NR/ DATE

RECORDER

REVIEW OF DISCHARGE OF (Name,Rate/Rank,SSN,Comp)

Attachment 2 (2)

REVIEW OF DISCHARGE  
NAVSO 1900/5C (REV. 3-77)  
SUPERCEDES ALL PREVIOUS EDITIONS  
PART 3

DEPARTMENT OF THE NAVY  
NAVAL DISCHARGE REVIEW BOARD

DOCKET NR/ DATE

RECORDER

REVIEW OF DISCHARGE OF (Name,Rate/Rank,SSN,Comp)

CHARACTER OF DISCHARGE

DATE OF ISSUE

CONCLUSIONS/REASONS

Attachment 2 (3)

		DECISION/RECOMMENDATION	
NO CHANGE	CHANGE		
		BOARD MEMBERS	
PRESIDENT		MEMBER	
MEMBER		MEMBER & RECORDER	
MEMBER			

## RULES AND REGULATIONS

REVIEW OF DISCHARGE  
 NAVSO 1900/5C (3-77)  
 PART 4

DEPARTMENT OF THE NAVY  
 NAVAL DISCHARGE REVIEW BOARD

DOCKET NR/ DATE

RECORDER

REVIEW OF DISCHARGE OF *(Name, Rate/Rank, SSN, Comp)*

CHARACTER OF DISCHARGE

DATE OF ISSUE

MINORITY CONCLUSIONS/REASONS

## Attachment 2 (4)

REVIEW OF DISCHARGE  
 NAVSO 1900/5C (3-77)  
 PART 5

DEPARTMENT OF THE NAVY  
 OFFICE OF THE SECRETARY  
 WASHINGTON, D.C. 20350

DOCKET NR/ DATE

RECORDER

REVIEW OF DISCHARGE OF *(Name, Rate/Rank, SSN, Comp)*

CHARACTER OF DISCHARGE

DECISION

## Attachment 2 (5)

DEPARTMENT OF THE NAVY  
NAVAL DISCHARGE REVIEW BOARD  
801 N. Randolph Street  
Arlington, Virginia 22203

Serial No. \_\_\_\_\_  
Date \_\_\_\_\_

From: Executive Secretary, Naval Discharge Review Board.  
To: Commandant, United States Marine Corps.  
Subj: Notification of decision in certain naval discharge review cases.  
Encl: (1) Records of discharge review proceedings and service records of personnel listed below.

- Pursuant to Title 10 United States Code Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharges from the Naval Service of the below listed individuals.
- The decision of the Board in each case is certified to be as it appears opposite the name of the former member.
- The Commandant of the Marine Corps is requested to issue revised discharge certificates in accordance with the Board decision in each case. It is further requested that the accompanying copy of the record of discharge review proceedings in each case be incorporated in the appropriate service record.

Docket No.	Name/social security No.	Character of discharge	Change to type/reason
------------	--------------------------	------------------------	-----------------------

There are \_\_\_\_\_ names in this notification.

- \*—Congressional interest.
- \*\*—Drug discharge (384).
- DD—Drug discharge (not 384).
- D/M—Drug abuse mentioned.
- #—SECNAVINST 1900.9A involvement.
- Hearing before the Traveling Board.

Attachment 3

DEPARTMENT OF THE NAVY  
NAVAL DISCHARGE REVIEW BOARD  
801 N. Randolph Street  
Arlington, Virginia 22203

Serial No. \_\_\_\_\_  
Date \_\_\_\_\_

From: Executive Secretary, Naval Discharge Review Board.  
To: Commandant, United States Marine Corps.  
Subj: Notification of decision in certain naval discharge review cases.  
Encl: (1) Records of discharge review proceedings and service records of personnel listed below.

- Pursuant to Title 10 United States Code Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharges from the Naval Service of the below listed individuals.
- It is certified that the decision of the Board in each case is that no change of the discharge is warranted.
- It is requested that the accompanying copy of the record of discharge review proceedings in each case be incorporated in the appropriate service record.

Docket No.	Name/social security No.	Character of discharge
------------	--------------------------	------------------------

There are \_\_\_\_\_ names in this notification.

- \*—Congressional interest.
- \*\*—Drug discharge (384).
- DD—Drug discharge (not 384).
- D/M—Drug abuse mentioned.
- #—SECNAVINST 1900.9A involvement.
- Hearing before the Traveling Board.

Attachment 4

DEPARTMENT OF THE NAVY  
NAVAL DISCHARGE REVIEW BOARD  
801 N. Randolph Street  
Arlington, Virginia 22203

Serial No. \_\_\_\_\_  
Date \_\_\_\_\_

From: Executive Secretary, Naval Discharge Review Board.  
To: Chief of Naval Personnel.  
Subj: Notification of decision in certain naval discharge review cases.  
Encl: (1) Records of discharge review proceedings and service records of personnel listed below.

- Pursuant to Title 10 United States Code Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharges from the Naval Service of the below listed individuals.
- The decision of the Board in each case is certified to be as it appears opposite the name of the former member.
- The Chief of Naval Personnel is requested to issue revised discharge certificates in accordance with the Board's decision in each case. It is further requested that the accompanying copy of the record of discharge review proceedings in each case be incorporated in the appropriate service record.

Docket No.	Name/social security No.	Character of discharge	Change to type/reason
------------	--------------------------	------------------------	-----------------------

There are \_\_\_\_\_ names in this notification.

- \*—Congressional interest.
- \*\*—Drug discharge (384).
- DD—Drug discharge (not 384).
- D/M—Drug abuse mentioned.
- #—SECNAVINST 1900.9A involvement.
- Hearing before the Traveling Board.

Attachment 5

DEPARTMENT OF THE NAVY  
NAVAL DISCHARGE REVIEW BOARD  
801 N. Randolph Street  
Arlington, Virginia 22203

Serial No. \_\_\_\_\_  
Date \_\_\_\_\_

From: Executive Secretary, Naval Discharge Review Board.  
To: Chief of Naval Personnel.  
Subj: Notification of decision in certain naval discharge review cases.

- Pursuant to Title 10 United States Code Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharges from the Naval Service of the below listed individuals.
- It is certified that the decision of the Board in each case is that no change of the discharge is warranted.
- The available service records in each case have been returned to the custody of the National Personnel Records Center.

Docket No.	Name/social security No.	Character of discharge
------------	--------------------------	------------------------

There are \_\_\_\_\_ names in this notification.

- \*—Congressional interest.
- \*\*—Drug discharge (384).
- DD—Drug discharge (not 384).
- D/M—Drug abuse mentioned.
- #—SECNAVINST 1900.9A involvement.
- Hearing before the Traveling Board.

Attachment 6

K. D. LAWRENCE,  
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

APRIL 1, 1977.  
[FR Doc.77-10221 Filed 4-7-77;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH SYSTEMS AGENCIES

Review of New Institutional Health Services

On January 21, 1977, there were published in the FEDERAL REGISTER (42 FR 4002-4032) regulations implementing that portion of Title XV of the Public Health Service Act that relates to the review of new institutional health services by health systems agencies (Subpart D of Part 122), and certificate of need and review of new institutional health services by State Health Planning and Development Agencies (Subpart E of Part 123). The purpose of this amendment is to revise two portions of those regulations.

Sections 122.304 and 123.404, "New institutional health services subject to review," as published on January 21, provided that such services subject to review include a "change in the bed capacity of a health care facility or Health Maintenance Organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period."

Sections 122.309 and 123.410, "Inpatient facilities; required findings," as published on January 21, provided that "in the case of any proposed new institutional health service for the provision of health services to inpatients" a health systems agency shall not recommend and a State Agency shall not grant a certificate of need under its certificate of need program "unless after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed" the agency "makes each of the following findings in writing." The required findings included in each case the finding that "superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable."

Serious concerns were expressed to the Secretary regarding these provisions

soon after his taking office. He has, therefore, reviewed these provisions carefully, as well as the corresponding provisions of the Notice of Proposed Rulemaking published in the FEDERAL REGISTER (41 FR 11688) on March 19, 1976, the comments received on them, and the reasons for changes to them. The conclusions emanating from this review are stated below, beginning with a discussion of changes in bed capacity.

The proposed regulations (NPRM) had provided that any change in bed complement of one or more beds must be subject to review. Commenters pointed out that changes of only one bed do not warrant a certification of need review. So as not to place an unnecessary burden on review agencies, the provision was modified so that the January 21 regulations provided that only those changes of more than forty beds or twenty-five percent of capacity, whichever is less, over a two-year period, were required to be subject to review.

After review of the comments and the NPRM the Secretary has concluded that while changes of only one bed may not warrant review, changes as large as forty beds or twenty-five percent of capacity may have significant effects on the health care system of an area or state. Although additions of more than a very few beds would in any case be reviewed under the capital expenditure threshold, this would not necessarily be the case for conversions. The conversion of beds can often be accomplished without substantial capital expenditure, although a change in the use of acute care beds, for example, from one service to another, can have significant impact on operational costs. In these cases, a substantial increase in institutional health services of a particular kind could occur under the January 21 regulations without a prior determination of need. Accordingly, the Secretary has decided to amend the regulations to require that changes of more than ten beds or ten percent of capacity must be subject to review.

The proposed regulations had required that a health systems agency could not recommend or a State Agency grant a certificate of need for a proposed new institutional health service for inpatients, unless the agency had made the written finding (among others) that "existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner." Commenters pointed out the unfairness of this requirement, since providers cannot directly influence the behavior of their competitors and thus should not be held responsible for it. In addition, such a requirement was regarded by many commenters as protecting inefficient providers from competition. The requirement was removed in the January 21 regulations, and agencies were required only to consider the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed.

The Secretary has concluded that while this removes an unfair burden from

the applicant, it still does not provide a written record so that the public may know what the agency found in its consideration, nor does it address the question of efficiency, which, although it may be included in the concept of appropriateness, should be made explicit. The Secretary has decided, therefore, to amend the regulations to require that a written finding be made as to the appropriateness and efficiency of the use of similar existing facilities. This would not require that the finding be one way or another for a certificate of need to be recommended or issued.

The January 21 regulations also modified the language of the proposed regulations to require a written finding that superior alternatives to the proposed service, in terms of cost, efficiency and appropriateness, do not exist and that development of them is not practicable. This did not, however, make clear the basis of the comparison. This amendment, accordingly, requires that the agency make its own written finding as to the cost, efficiency and appropriateness of the proposed service. While some agencies initially will rely on data submitted by the applicant, it is expected that they will move to develop their capacity to analyze such data critically, and later to develop their own data where necessary. This written finding as to the cost, efficiency, and appropriateness of the proposed service, like the one above as to the efficiency and appropriateness of similar existing services, would not limit the ability of the agencies to recommend or issue a certificate of need. Rather, it would require only that the finding, whatever it may be, become a part of the record.

In view of the fact that these amendments concern issues which have received extensive public discussion and comment, and since many State legislatures are now meeting and are now looking to these regulations for guidance as to the minimum requirements for State certificate of need programs, the Secretary has determined that public participation in rulemaking and a delay in effective date are unnecessary and would be impractical and contrary to the public interest, and, accordingly, that good cause exists for waiving public participation in rulemaking and for making these amendments effective immediately on publication in the FEDERAL REGISTER.

The amendments set out below are therefore effective April 8, 1977.

For further information, contact Ms. Libby Merrill, Acting Director, Office of Policy Coordination, (301) 443-1670.

Concerns have also been expressed to the Secretary regarding the coverage of new institutional health services proposed for space leased in covered facilities or health maintenance organizations. The coverage of capital expenditures for equipment to be used in leased space (§ 122.304(a)(2) and § 123.404(a)(2)) and new health services to be offered in leased space (§ 122.304(a)(4) and § 123.404(a)(4)) will be clarified in guidelines to be issued soon.

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.

Dated: March 2, 1977.

JAMES F. DICKSON,  
Acting Assistant Secretary  
for Health.

Approved: March 31, 1977.

JOSEPH A. CALIFANO, JR.,  
Secretary.

#### PART 122—HEALTH SYSTEMS AGENCIES

Part 122 of Title 42, CFR, is amended at § 122.304(a)(3) and at § 122.309 to read as follows:

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).)

#### § 122.304 New institutional health services subject to review.

(a) \* \* \*

(3) A change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than ten beds or more than ten percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

#### § 122.309 Inpatient facilities; required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a health systems agency shall not recommend that a State grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless:

(a) the health systems agency makes written findings as to:

(1) the efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed; and

(2) the capital and operating costs (and their potential impact on patient charges), efficiency, and appropriateness of the proposed new institutional health service; and

(b) the health systems agency makes each of the following findings in writing:

(1) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable;

(2) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(3) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(4) That in the case of a proposal for the addition of beds for the provision of

skilled nursing or intermediate care, the relationship of the addition to the plans of agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

**PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES**

Part 123 of Title 42, CFR, is amended at § 123.404(a)(3) and at § 123.410 to read as follows.

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1523, 1532 of the Public Health Service Act, 88 Stat. 2246, 2251.)

**§ 123.404 New institutional health services subject to review.**

(a) \* \* \*

(3) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than ten beds or more than ten percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

**§ 123.410 Inpatient facilities; required findings.**

In the case of any proposed new institutional health service for the provision of health services to inpatients, a State Agency shall not grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless:

(a) the State Agency makes written findings as to:

(1) the efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed; and

(2) the capital and operating costs (and their potential impact on patient charges), efficiency, and appropriateness of the proposed new institutional health service; and

(b) the State Agency makes each of the following findings in writing:

(1) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable;

(2) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(3) That patients will experience serious problems in terms of costs, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(4) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care the relationship of the addition to the plans of other agencies of the State re-

long-term care (including home health services) has been considered.

[FR Doc.77-10126 Filed 4-7-77;8:45 am]

**Title 50—Wildlife and Fisheries**

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

**PART 611—FOREIGN FISHING**

**Foreign Fishery Allocations**

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service, Commerce.

ACTION: Correction

SUMMARY: This document is being published to correct groundfish allocations made to the Republic of Korea and Taiwan as published in the FEDERAL REGISTER (Doc. 77-8266), March 3, 1977.

EFFECTIVE DATE: Effective date April 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard Schaefer, Fishery Management Operations Division, National Marine Fisheries Service, Washington, D.C. 20235 (202-634-7454)

Page 12176, § 611.20(c)(1), Table 2, is corrected as follows:

1. ROK, Other Groundfish, Bering Sea, add footnote number "7" to 1,600, and footnote "7" should read "Of which no more than 175 metric tons may be Pacific ocean perch."

2. ROK, Other Groundfish, Aleutians, add footnote number "8" to 890 and footnote "8" should read "Of which no more than 350 metric tons may be Pacific ocean perch."

3. Taiwan, Other Groundfish, Bering Sea, add footnote "9" to 200, and footnote "9" should read "Of which no more than 25 metric tons may be Pacific ocean perch."

4. Taiwan, Other Groundfish, Aleutians, add footnote number "10" to 110, and footnote "10" should read "Of which no more than 50 metric tons may be Pacific ocean perch."

Dated: April 5, 1977.

JACK W. GEHRINGER,  
Deputy Director,  
National Marine Fisheries Service.

[FR Doc.77-10470 Filed 4-7-77;8:45 am]

**Title 5—Administrative Personnel**

**CHAPTER I—CIVIL SERVICE COMMISSION**

**PART 213—EXCEPTED SERVICE**

Administrative Office of the United States Courts

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: One additional position of Federal Probation System Administrator in the Division of Probation is ex-

cepted under Schedule B since it is impractical to examine competitively for this position.

EFFECTIVE DATE: April 8, 1977

FOR FURTHER INFORMATION CONTACT:

Bill Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3272(a) is amended to read as follows:

§ 213.3272 Administrative Office of the U.S. Courts.

(a) Not to exceed 13 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers on active service in the U.S. Courts.

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

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

[FR Doc.77-10389 Filed 4-7-77;8:45 am]

**PART 213—EXCEPTED SERVICE**

Department of the Air Force

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This amendment excepts from the competitive service one Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio, with the provision that individual appointments under the authority will be for an initial 3-year period which may be followed by an appointment of indefinite duration. This exception is granted because it is impracticable to competitively examine for these positions.

EFFECTIVE DATE: April 8, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3209(c) is added as set out below:

§ 213.3209 Department of the Air Force.

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period which may be followed by an appointment of indefinite duration.

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

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

[FR Doc.77-10390 Filed 4-7-77;8:45 am]

**PART 213—EXCEPTED SERVICE**

Department of Housing and Urban Development

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This addition excepts from the competitive service under Schedule C one position of Executive Secretary to the Under Secretary because of the confidential nature of the position.

EFFECTIVE DATE: April 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Bill Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3384(a) (24) is amended to read as follows:

**§ 213.3384 Department of Housing and Urban Development.**

(a) *Office of the Secretary.* \* \* \* (24) One Staff Assistant and one Executive Secretary to the Under Secretary. (5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

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

[FR Doc. 77-10391 Filed 4-7-77; 8:45 am]

**PART 430—PERFORMANCE EVALUATION AND RATING**

Final Rule

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: The Performance Evaluation and Rating regulations are revised in their entirety to reflect requirements of the performance rating chapter of title 5, United States Code, which were previously included only in the Federal Personnel Manual, to make certain changes in procedures for appealing performance ratings, and to make editorial changes. The purpose of the changes is to make the part more complete and update it where needed.

EFFECTIVE DATE: April 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Mary Sugar, Personnel Management Specialist, Bureau of Policies and Standards, U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C. 20415, 202-632-5623.

SUPPLEMENTARY INFORMATION: On July 1, 1976, draft amendments were sent to agencies and unions for comment. The comments received have been reviewed and incorporated where appropriate. The following specific changes are being made in this part: (1) a coverage section is included to reflect exclusions from Part 430 not listed in 5 U.S.C. 4301; (2) a new Subpart B is added to reflect requirements of chapter 43 of title 5, U.S.C., which were previously only in-

cluded in chapter 430 of the Federal Personnel Manual and existing Subpart B is redesignated as Subpart C; and (3) Subpart C provides exclusively for ad hoc boards of review to consider and decide performance rating appeals, requires that appeals be filed with the Civil Service Commission which designates the chairman of board of review, establishes uniform 15-day time limits for filing appeals or requests for impartial review, and provides for reconsideration rather than rehearing of decided appeals.

Accordingly 5 CFR 430 is amended to read as follows:

**Subpart A—General Provisions**

Sec.  
430.101 Coverage.  
430.102 Definitions.

**Subpart B—Performance Ratings**

430.201 Establishment of performance rating plans.  
430.202 Assignment of ratings.

**Subpart C—Performance Rating Appeals**

430.301 Establishment of boards of review.  
430.302 Members of boards.  
430.303 Appeals.  
430.304 Hearings.  
430.305 Board decisions.

AUTHORITY: 5 U.S.C. 4308.

**Subpart A—General Provisions**

**§ 430.101 Coverage.**

(a) *Agencies covered.* Except as provided in subsection (b), this part applies to any of the following agencies:

- (1) Executive agencies;
  - (2) The Administrative Office of the United States Courts;
  - (3) The Library of Congress;
  - (4) The Botanic Garden;
  - (5) The Government Printing Office; and
  - (6) The Government of the District of Columbia.
- (b) *Agencies and employees not covered.* (1) This part does not apply to:
- (i) The Tennessee Valley Authority;
  - (ii) The U.S. Postal Service and Postal Rate Commission;
  - (iii) The Energy Research and Development Administration;
  - (iv) The Nuclear Regulatory Commission;
  - (v) The Central Intelligence Agency;
  - (vi) The National Security Agency; or
  - (vii) A Government-controlled corporation.

(2) This part does not apply to:

- (i) A physician, dentist, nurse, or other employee of the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under chapter 73 of title 38, United States Code;
- (ii) An employee outside the continental United States who is paid in accordance with local native prevailing rates for the area in which employed;
- (iii) A civilian officer or member of a crew of a vessel operated by the Department of the Army or the Department of the Navy;
- (iv) The Foreign Service of the United States;
- (v) A person employed by the government of the District of Columbia whose

pay is not fixed under chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(vi) An administrative law judge appointed under section 3105 of title 5, United States Code; or

(vii) Department of Defense teachers and other school personnel employed in the United States under section 6(a) of Public Law 81-874 (20 U.S.C. 241(a)).

**§ 430.102 Definitions.**

In this part: (a) "Plan" means performance rating plan established under Subpart B of this part;

(b) "Rating" means summary adjective rating required under Subpart B of this part;

(c) "Board" means Performance Rating Boards of Review established under Subpart C of this part; and

(d) "Days" means calendar days and not workdays.

**Subpart B—Performance Ratings**

**§ 430.201 Establishment of performance rating plans.**

(a) *Establishment of plans.* Each agency shall establish one or more performance rating plans for evaluating the work performance of its employees.

(b) *Civil Service Commission approval.* Proposed agency plans or changes in plans shall be submitted to the Civil Service Commission for prior approval as conforming to the requirements of this part.

(c) *Rating levels.* Each plan shall provide for three summary performance rating levels: outstanding, satisfactory, and unsatisfactory, and may provide for a fourth level between satisfactory and outstanding.

**§ 430.202 Assignment of ratings.**

(a) *Annual ratings.* Each employee shall be assigned a performance rating at least once a year. An agency shall promptly notify employees of their ratings. Ratings shall be assigned only under approved plans, and under performance requirements which were in effect during the rating period and communicated to the employees at the beginning of the rating period.

(b) *Outstanding ratings.* An outstanding rating may be assigned only when all aspects of performance not only exceed normal requirements, but are outstanding and deserve special commendation.

(c) *Unsatisfactory rating.* An unsatisfactory rating may be assigned only after an employee has received 90-day advance written warning and has had a reasonable opportunity to perform at a satisfactory level. An unsatisfactory rating is assigned when the overall impact of the employee's performance is such that removal from the position will be considered unless there is prompt, substantial improvement.

**Subpart C—Performance Rating Appeals**

**§ 430.301 Establishment of performance rating boards of review.**

An agency shall establish, on a case by case basis, performance rating boards

of review to consider and decide appeals of performance ratings assigned under this part.

#### § 430.302 Members of boards.

Each board is composed of a chairman designated by the Commission, an employee member designated in a manner approved by the Commission, and an agency member designated by authority of the agency head. Any alternate members are designated in the same manner as their principals.

#### § 430.303 Appeals.

(a) *Unsatisfactory rating.* An employee with an unsatisfactory rating is entitled to an impartial review of the rating by the agency, to appeal directly to a board of review, or to appeal to the board after obtaining the impartial review.

(b) *Satisfactory or better rating.* An employee with a satisfactory or better rating is entitled to either an impartial review of the rating by the agency, or to appeal to a board of review, but not both.

(c) *Filing a request for an impartial review or an appeal.* A request for an impartial review shall be filed in the manner designated by the plan. An appeal shall be filed with the Civil Service Commission.

(d) *Time limits on requests for impartial reviews or appeals.* Unless longer time limits are established in the plan:

(1) A request for an impartial review or an appeal shall be filed no later than fifteen days after the employee is notified of the rating;

(2) An appeal shall be filed within fifteen days after the employee withdraws his or her timely request for an impartial review when more than thirty days have elapsed since the notice of rating was given; or

(3) An appeal shall be filed no later than fifteen days after the employee receives the agency's decision on the impartial review of an unsatisfactory rating.

(e) *Extension of time limits.* Upon written request in accordance with the plan, an employee may request an extension of the time limits in paragraph (d). In an impartial review the appropriate agency official, or in an appeal the board, may extend the time limits for good and sufficient reasons.

#### § 430.304 Hearings.

(a) *Oral hearing.* The appellant is entitled to a hearing before the board. If the appellant waives the right to a hearing, the board will consider the appeal on the basis of written information submitted by both parties.

(b) *Conduct of hearing.* The appellant, the appellant's representative, and the agency representative may attend the hearing. The chairman of the board presides at the hearing and rules on questions arising at it. The hearing is conducted in order to bring out pertinent facts. The parties may submit any information the board finds pertinent and may hear, examine, and reply to information received by the board. The

board shall consider only information which is directly related to the rating. The board shall consider the record of an impartial review of a rating under paragraph (a) of § 430.303.

#### § 430.305 Board decisions.

(a) *The decision.* The board shall consider the pertinent facts in an appeal and by majority vote either (1) increase the appealed rating or (2) sustain the rating without change.

(b) *Notice of decision.* The board's decision shall be in writing and contain a summary statement of the facts on which it is based. The board shall send copies of the decision to the appellant, the appellant's representative, and the agency representative. The decision of the board is final and there is no further right of appeal.

(c) *Effect of decision.* When an agency receives notice of a board's increase in an employee's rating, the agency shall correct all records of the original rating, reconsider any and all administrative actions based on the original rating, and insofar as possible under the law and regulations and in the public interest, redetermine and adjust those administrative actions to conform to the corrected rating.

(d) *Reconsideration.* Reconsideration of a decided appeal may be granted by majority vote of the board only on receipt of information from the party seeking reconsideration that the correctness of the decision is doubtful. A request for reconsideration of a decided appeal must be filed within fifteen days after the date of receipt of the board's decision on the appeal.

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

[FR Doc.77-10590 Filed 4-7-77; 10:32 am]

#### Title 9—Animals and Animal Products

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

#### PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES, AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

#### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

#### Termination of Designation of the State of Ohio With Respect to the Inspection of Meat and Poultry Products

AGENCY: Meat and Poultry Inspection Program, USDA.

ACTION: Termination of Designation of the State of Ohio under the Federal Meat Inspection Act and the Poultry Products Inspection Act.

SUMMARY: The Governor of Ohio had advised this Department that the State of Ohio would no longer be in a position

to continue administering the State meat and poultry inspection programs after April 9, 1977. Therefore, the Secretary of Agriculture designated the State of Ohio as required under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act with an effective date of application of Federal provisions of April 10, 1977. Since then, the Governor of Ohio had advised the Department that Ohio will now continue its meat and poultry inspection programs and requested that the designation of Ohio under the Acts be terminated. Therefore, such designations of Ohio are hereby terminated.

EFFECTIVE DATE: April 8, 1977.

#### FOR FURTHER INFORMATION CONTACT:

Dr. James K. Payne, Director, Federal-State Relations, Field Operations, Meat and Poultry Inspection Program, U.S. Department of Agriculture, Washington, D.C. 20250. (202-447-6313).

**SUPPLEMENTARY INFORMATION:** The Governor of the State of Ohio had advised this Department that the State of Ohio would no longer be in a position to continue administering the State meat and poultry inspection programs after April 9, 1977, and requested the Department to assume the responsibility for carrying out the provisions of titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered or their carcasses, or parts or products thereof, are prepared for use as human food, or at which poultry are slaughtered or poultry products are processed for use as human food, solely for distribution within such State, and with respect to intrastate operations and transactions concerning products and other articles and animals subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act, and persons, firms, and corporations engaged therein.

The Secretary determined that in view of the proposed termination date for the Ohio programs, Ohio was effectively enforcing requirements at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act, inasmuch as those requirements contemplate continuous ongoing programs.

Accordingly, on March 3, 1977, a notice was published in the FEDERAL REGISTER (42 FR 12177) designating the State of Ohio, effective March 3, 1977, under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act; and April 3, 1977, was specified as the "Effective date of application of Federal provisions" for both programs. However, on March 8, 1977, in the FEDERAL REGISTER (42 FR 13013), the effective date of designation in both programs

was changed to March 10, 1977, and the "Effective date of application of Federal provisions" for both programs, to April 10, 1977.

Since then, the Governor has informed the Department that Ohio will now continue its meat and poultry inspection programs and requested that the designation of Ohio under the Acts be terminated. The Secretary has now determined that since Ohio will continue its meat and poultry inspection programs, Ohio will enforce State meat and poultry inspection requirements at least equal to the requirements under titles I and IV of the Federal Meat Inspection Act and sections 1-4, 6-10, and 12-22 of the Poultry Products Inspection Act.

Therefore, the designation of the State of Ohio with respect to meat and meat products and poultry and poultry products under the Acts is hereby terminated.

#### § 331.2 [Amended]

Accordingly, § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is hereby amended by deleting "Ohio" from the "State" column and by deleting the date which was added on the line with "Ohio".

(Secs. 21 and 301(c)(3), 34 Stat. 1260, as amended; 21 U.S.C. 621, 681(c)(3).)

#### § 381.221 [Amended]

Also, § 381.221 of the poultry products inspection regulations (9 CFR 381.221) is hereby amended by deleting "Ohio" from the "State" column and by deleting the date which was added on the line with "Ohio".

(Secs. 5(c) and 14, 71 Stat. 441, as amended; 21 U.S.C. 454(c)(3), 463.)

This amendment of the meat and poultry inspection regulations is necessary to reflect the determination of the Secretary of Agriculture under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Secretary. Therefore, under the administrative procedure provision in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

The Department of Agriculture 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.

Done at Washington, D.C. on April 6, 1977.

CAROL TUCKER FOREMAN,  
Assistant Secretary for  
Food and Consumer Services.

[FR Doc. 77-10592 Filed 4-7-77; 10:51 am]

### Title 21—Food and Drugs

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

### SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76F-0089]

#### PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

##### Resinous and Polymeric Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food additive regulations are amended to provide for safe use of dodecyl benzenesulfonic acid as a curing catalyst for urea-formaldehyde and triazine-formaldehyde resins as the basic polymers in coatings intended for food-contact use.

DATES: Effective April 8, 1977; objections by May 9, 1977.

ADDRESS: Written objections to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

#### FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-302), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, (202-472-5690).

SUPPLEMENTARY INFORMATION: A notice published in the FEDERAL REGISTER of April 8, 1976 (41 FR 14914) announced that a food additive petition (FAP 6B3151) had been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that § 175.300 (21 CFR 175.300, formerly § 121.2514, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) be amended to provide for the safe use of dodecyl benzenesulfonic acid as a curing catalyst for urea-formaldehyde and melamine-formaldehyde resins in coatings intended for food-contact use.

Subsequently, an amended notice of filing was published in the FEDERAL REGISTER of September 23, 1976 (41 FR 42969), proposing that § 175.300 be amended to provide for the safe use of dodecyl benzenesulfonic acid as a curing catalyst for urea-formaldehyde and triazine-formaldehyde resins in coatings intended for food-contact use.

The Commissioner of Food and Drugs, having evaluated the data in the food additive petition and other relevant material, concludes that the regulation should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Com-

missioner (21 CFR 5.1), Part 175 is amended in § 175.300 by revising paragraph (b)(3) (xii) and (xiii) to read as follows:

#### § 175.300 Resinous and polymeric coatings.

(b) \* \* \*

(3) \* \* \*

(xii) Urea-formaldehyde resins and their curing catalyst:

(a) Urea-formaldehyde resins, as the basic polymer:

Urea-formaldehyde.

Urea-formaldehyde chemically modified with methyl, ethyl, propyl, isopropyl, butyl, or isobutyl alcohol.

Urea-formaldehyde chemically modified with one or more of the amine catalysts listed in paragraph (b)(3) (viii)(b) of this section.

(b) Curing (cross-linking) catalyst for urea-formaldehyde resins:

Dodecyl benzenesulfonic acid (C.A. Registry No. 27176-87-0).

(xiii) Triazine-formaldehyde resins and their curing catalyst:

(a) Triazine-formaldehyde resins, as the basic polymer:

Benzoguanamine-formaldehyde.

Melamine-formaldehyde.

Melamine-formaldehyde chemically modified with one or more of the following amine catalysts:

Amine catalysts listed in paragraph (b)

(3) (viii) (b) of this section.

Dimethylamine-2-methyl-1-propanol.

Methylpropanolamine.

Triethanolamine.

Melamine-formaldehyde chemically modified with methyl, ethyl, propyl, isopropyl, butyl, or isobutyl alcohol.

(b) Curing (cross-linking) catalyst for triazine-formaldehyde resins:

Dodecyl benzenesulfonic acid (C.A. Registry No. 27176-87-0).

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 9, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Four copies of all documents shall be filed and identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be



seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective April 8, 1977.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: April 1, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate Commissioner  
for Compliance.

[FR Doc. 77-10399 Filed 4-7-77; 8:45 am]

[Docket No. 75F-0287]

**PART 177—INDIRECT FOOD ADDITIVES: POLYMERS**

**Polyethylene Phthalate Polymers**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food additive regulations are amended to provide for safe use of a heat-sealing coating on film intended for sealing polyester pouches holding beverages. This order is based on a petition proposing such a regulation.

DATES: Effective April 8, 1977; objections by May 9, 1977.

ADDRESS: Written objections to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

**FOR FURTHER INFORMATION CONTACT:**

John J. McAuliffe, Bureau of Foods (HFF-302), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, (202-472-5690).

**SUPPLEMENTARY INFORMATION:** Notice was given in the FEDERAL REGISTER of October 29, 1975 (40 FR 50299), that a petition (FAP 5B3097) had been filed by ICI United States Inc., Concord Pike and New Murphy Rd., Wilmington, Del. 19897, proposing that § 177.1630 (21 CFR 177.1630, formerly § 121.2524, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) be amended to provide for safe use of ethylene azelate-terephthalate copolymer as a heat-sealing coating on polyethylene terephthalate films for food-contact (beverage) use.

In a related notice in the FEDERAL REGISTER of October 5, 1976 (41 FR 43944) FDA announced the availability on October 8, 1976 of the final environmental impact statement on plastic bottles for carbonated beverages and beer, including polyester (polyethylene terephthalate) pouches.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, concludes that § 177.1630 should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1),

72 Stat. 1786 (21 U.S.C. 348(c)(1))), and under authority delegated to the Commissioner (21 CFR 5.1), Part 177 is amended in § 177.1630 by alphabetically inserting a new item in the list of substances in paragraph (e)(4)(iii) to read as follows:

**§ 177.1630 Polyethylene phthalate polymers.**

- (e) \* \* \*
- (4) \* \* \*

(iii) Coatings:

Ethylene azelate-terephthalate copolymer: The copolymer, dissolved in 1,1,2-trichloroethane and/or methylene chloride, may be used as a heat-activated sealant on polyethylene terephthalate film intended for sealing polyethylene terephthalate pouches that are used as containers of either non-alcoholic beverages or alcoholic beverages containing not more than 15 percent ethyl alcohol. The copolymer has a terephthalate/azelate molecular ratio of 1.25/1.00 and a relative viscosity of not less than 1.5 as determined by a method available from the Director, Division of Food and Color Additives (HFF-330), Food and Drug Administration, Washington, DC 20204. Total residual copolymer solvent (1,1,2-trichloroethane and/or methylene chloride) shall not exceed 0.13 milligram per square inch of film, and food contact of the film shall be limited to not more than 1 square inch per 250 grams of beverage.

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 9, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Four copies of all documents shall be filed and identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective April 8, 1977.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: April 1, 1977.

WILLIAM F. RANDOLPH,  
Acting Associate Commissioner  
for Compliance.

[FR Doc. 77-10398 Filed 4-7-77; 8:45 am]

**SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS**

[Docket Nos. 75N-0171; 76N-0082]

**ANTIBIOTICS, NITROFURAN, AND SULFONAMIDES**

AGENCY: Food and Drug Administration, HEW.

ACTION: Final rule.

SUMMARY: This document amends regulations on antibiotic, nitrofurans, and sulfonamide drugs in animal feeds, including those that were included in the reorganization and republication (recodification) of animal drug regulations published in the FEDERAL REGISTER of March 15, 1976 (41 FR 10984).

DATES: Effective March 8, 1977.

**FOR FURTHER INFORMATION CONTACT:**

Gerald B. Guest, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-3410).

**SUPPLEMENTARY INFORMATION:**

The Commissioner of Food and Drugs issued, in the FEDERAL REGISTER of February 25, 1976, a regulation based on a proposal published in the FEDERAL REGISTER of August 6, 1974 (39 FR 28393) and republished on September 27, 1974 (39 FR 34682). The February 25 document amended § 558.15 (21 CFR 558.15) by establishing therein a list of manufacturers of medicated feed premixes and the approved premixes and combination medicated feed products in compliance with the provisions of that section. It also deleted those products that were subject to, but had not complied with, the requirements for continued marketing set forth in that section.

In the FEDERAL REGISTER of March 15, 1976, the Commissioner recodified the animal drug regulations previously promulgated in Part 121 (21 CFR Part 121) under section 409 of the act (21 U.S.C. 348), placing the regulations, including those amended by the February 25 document, into Parts 526, 529, 540, and 558 (21 CFR Parts 526, 529, 540, and 558).

After the August 6, 1974 proposal to amend § 558.15 and corresponding regulations, many comments were received; these alleged various errors or omissions. The preamble to the February 25, document addressed the comments submitted and gave the Commissioner's response to each. Additional responses to the February 25 document are addressed in this document. In addition, after publication of the March 15 recodification, several comments were received, some from previous respondents; these are also addressed below.

Several respondents noted the recodified regulations did not include the sponsors of approved medicated premixes, approved premix levels, or approved uses.

As stated in the preamble to the March 15 recodification, the changes made were nonsubstantive. The recodi-

fied regulations did not identify sponsors or premix levels because to do so would constitute a substantive change.

The specific responses received concerning the February 25 document and the March 15 recodification and the Commissioner's response to each are as follows:

1. Abbott Laboratories commented on the February 25 and March 15 documents about their approvals for use of arsanilic acid with erythromycin in various combinations for poultry feeds:

a. In the February 25 document, item 11 of the preamble (41 FR 8286) stated that Merck & Co. is sponsoring effectiveness studies on several drug combinations containing erythromycin and amprolium. Neither Merck nor Abbott is doing such work. These products have been deemed effective by the contemporary standards.

The Commissioner agrees. Since the combinations are currently included in the regulations, no amendment is required.

b. In the same document in item 21 of the preamble (41 FR 8287), it was stated that the use of erythromycin in cattle is covered by § 510.515 (21 CFR 510.515). The firm said this is in error. In addition, the firm noted that this use was not included in § 558.15(g)(1) (21 CFR 558.15(g)(1)).

The Commissioner agrees that inclusion of this use in § 510.515 would have been in error; however, since it was cited in the preamble but not included in the regulation, no amendment is required. This use is included in § 558.15(g)(1) as a separate entry.

c. In the third paragraph of item 21 of the preamble, Abbott noted that the document incorrectly states that the firm is conducting efficacy studies on erythromycin combinations.

The Commissioner agrees that these combinations were approved after June 7, 1967, and therefore do not require additional efficacy data.

d. In item 22 of the preamble (41 FR 8287), Abbott expressed interest in sponsoring bacitracin, zoalene, and arsanilic acid drug combinations pending resolution of the antibiotic safety issues.

Section 558.15(a) states that 2 years were given for submission of data to resolve conclusively the issues concerning safety to man and animals and their effectiveness as combination products. Submission of such data was required by April 20, 1975. No commitments were received to carry out the required efficacy studies on these combinations. Therefore, this combination is not eligible for interim marketing.

e. Abbott stated that the use of various combinations of erythromycin, amprolium, ethopabate, and arsanilic acid were incorrectly deleted from § 121.210 (21 CFR 121.210). In addition, zoalene, bacitracin, and arsanilic acid were similarly and incorrectly deleted from § 121.207 (21 CFR 121.207).

The Commissioner agrees that these combinations should be included in the regulations. One of the combinations, zoalene-bacitracin-arsanilic acid, is in-

cluded in § 558.15(g)(2) for Dow Chemical Co.; the appropriate sections are amended to include these approvals.

f. Abbott requested that combinations of arsanilic acid and various antibiotics listed in § 144.26 (recodified as 21 CFR 510.515) be permitted on an interim basis. The firm has expressed interest in sponsoring these combinations pending resolution of the antibiotic safety studies.

As indicated in item d above, § 558.15(a) clearly indicates a 2-year interim with no provisions for subsequent resolution of questions. Therefore, the request is denied.

g. The firm stated that the use of erythromycin in cattle should be included in § 558.15(g)(1).

The Commissioner notes that this item is included in § 559.15(g)(1) as a separate entry.

h. Abbott questioned the inclusion of several combinations containing erythromycin, zoalene, amprolium, ethopabate, and arsanilic acid in § 558.15(g)(2), since these combinations were approved after June 1967.

These combinations are not listed for Abbott under § 558.15(g)(2). These combinations are not under review for efficacy, but the safety issues have not been resolved.

i. Abbott suggests the regulations for arsanilic acid and sodium arsanilate be combined, since they are for the acid or salt form of the same drug.

The Commissioner concedes that these drugs are similar, but each is the subject of different conditions of approval. Therefore, they should not be combined under a single section.

j. Abbott questioned the failure to include sponsors for their arsanilic acid and sodium arsanilate approvals.

The recodification was a republication of material in Part 121 that was moved to Part 558. Additional information would have constituted a substantive change that could not be included.

k. Abbott questioned the inclusion of the provision for use of erythromycin thioyanate in cattle in § 558.248(e)(2) rather than in the table in paragraph (e)(1).

The table in § 558.248(e) represents those currently approved uses in complete feeds. The use in question is for a feed supplement and is a separate item.

2. A.L. Laboratories, Inc., and S. B. Penick & Co. noted that the two documents failed to reflect the change in sponsorship from S. B. Penick to A.L. Laboratories for several new animal drug applications (NADA's) for bacitracin methylene disalicylate. In addition, A.L. Laboratories stated that the use of bacitracin methylene disalicylate in the feed of quail and pheasants for growth promotion and improved feed efficiency had been omitted.

The Commissioner agrees that the new sponsor for bacitracin methylene disalicylate should be reflected in the regulations in § 558.15(g)(1). Other sections affected by the change of sponsorship will be covered by a separate document. Con-

cerning omission of the feed uses of bacitracin methylene disalicylate in pheasants and quail, the Commissioner notes that the use for pheasants is included in § 558.76(e)(1)(i) (21 CFR 558.76(e)(1)(i)). The use of the drug for quail was inadvertently omitted and is being added to the section. In addition, several approved combination uses of the drug that had not been included in the recodified regulations are being added to paragraph (e)(3) of the section.

3. Comments submitted by American Cyanamid Co. are as follows:

a. Their approval as a sponsor for certain chlortetracycline premixes used in the manufacture of finished feed for horses, sheep, goats, and psittacine birds was not included in § 558.15(g)(1).

Premixes for use in horses and psittacine birds are uses for nonfood animals and thus not properly the subject of § 558.15. These uses of the drug are approved uses included in § 558.128(e)(1) and (2), table 2, item (vi). The title of table 2 is misleading because it fails to reflect inclusion of feed use for horses as well as cattle. It is amended to read "in feed supplements." Entry (vi) of the table, regarding the use of chlortetracycline for horses, is amended to add the claim "growth promotion and feed efficiency." This claim was not included in the recodification. The use of the drug in sheep is properly codified in § 558.128(e)(2), table 1, item (ii). No prior publication covered its use in goats; therefore, no changes are indicated in this regard.

b. The approved premix containing chlortetracycline, sulfamethazine, and penicillin was not listed in § 558.15.

The premix containing chlortetracycline, sulfamethazine, and penicillin is covered by § 558.145 (21 CFR 558.145) and, as such, is included by reference in § 558.15(g)(2) (see introductory text of § 558.15(g)(2)).

c. The claim for use of chlortetracycline in the feed of laboratory mice was deleted from § 510.515(b)(29).

The use of chlortetracycline in the feed of laboratory mice is an approved use, which was inadvertently omitted from § 510.515; it is reinstated.

d. The firm was not listed as a sponsor of a premix or finished feed in § 558.128 (21 CFR 558.128).

Sponsors of approved NADA's were not identified in the regulations in Part 121 and were not included in the recodified regulations.

e. Hess & Clark is incorrectly listed as a sponsor of roxarsone in § 558.530 (21 CFR 558.530), since Salsbury Laboratories is listed as sponsor when roxarsone is used with robenidine in § 558.515.

An application for roxarsone premix was approved for Hess & Clark, notice of which was published in the FEDERAL REGISTER of July 30, 1975 (40 FR 31933). Approval for roxarsone marketed by Salsbury Laboratories predated enactment of the Animal Drug Amendments of 1968; however, the Salsbury application is deemed approved pursuant to section 108(b)(2) of the transitional provisions to the Animal Drug Amendments of 1968.

Because the data regarding the safety and effectiveness of the combination of robenidine and roxarsone were obtained using the Salsbury product, Salsbury is identified as the source of roxarsone for use in this combination.

4. Commerical Solvents Corp. stated they had filed a commitment to conduct studies on combinations of zinc bacitracin, with amprolium, ethopabate, and roxarsone and as a result of this commitment, noted several apparent omissions in the documents:

a. Amprolium is listed in § 558.55 in combination with bacitracin methylene disalicylate with and without roxarsone but not with zinc bacitracin; also, the combinations of zinc bacitracin in § 558.78(e) (3) (21 CFR 558.78(e) (3)) appear incomplete in that combinations with diethylstilbestrol, arsanilic acid, and monensin are not included.

The Commissioner has evaluated these comments and concludes that the cited combinations with zinc bacitracin were inadvertently omitted in the recodified regulations. These combinations are reinstated.

b. In the recodified regulations in Part 558, the approved premix levels and the sponsoring firms are not listed.

In reference to approved premixes and sponsors, they were not identified in the regulations in Part 121 and therefore were not included in the recodified regulations.

5. Dow Chemical U.S.A. stated that § 558.680 (21 CFR 558.680) failed to include zoalene in combination with penicillin and roxarsone, or arsanilic acid and bacitracin, or chlortetracycline.

The Commissioner finds that these combination drugs were inadvertently deleted. The regulations are amended to include these uses.

6. Elanco Products Co., in two responses, questioned the deletion of combinations of hygromycin B with zoalene, amprolium, or tylosin. In addition, the firm noted the deletion of combinations of tylosin with penicillin for broiler chickens, tylosin with amprolium or zoalene for chickens, and hygromycin B for chickens and swine.

The Commissioner concludes that appropriate commitments have been submitted covering the use of hygromycin B alone and in combination with amprolium and zoalene, and these combinations are reinstated. Such commitments have not been submitted regarding the combination of hygromycin B and tylosin, nor have they been submitted regarding tylosin with procaine penicillin. Therefore, the Commissioner concludes that these drug combinations are properly deleted from the regulations. However, the Commissioner notes that § 558.625 (21 CFR 558.625) does erroneously refer to several tylosin combinations that are no longer approved. This inadvertent cross-reference is deleted.

7. Merck and Co., Inc., commented in several letters as follows:

a. Section 558.55 (21 CFR 558.55) permits a combination of amprolium, bacitracin, and penicillin without specifying any indications for use.

The Commissioner agrees that the lack of indications for this combination was in error; a correction was published in the FEDERAL REGISTER of April 5, 1976 (41 FR 14367).

b. Section 558.58(e)(1) contains a statement indicating use of those feeds in chickens as well as turkeys, without citing any specific uses for turkeys.

The Commissioner notes that these feeds have not been approved for use in turkeys. The regulation is amended to delete reference to use in turkeys.

c. Section 558.58 lists several combinations of amprolium and ethopabate, without listing the approval for use of this combination.

The Commissioner agrees; the regulations are amended to add the approval.

d. Section 558.58 does not include amprolium and ethopabate in combination with roxarsone, nor with erythromycin, with or without arsanilic acid.

The Commissioner agrees; the regulations are amended to add these approvals.

e. Section 558.460 (21 CFR 558.460) provides incorrect levels for penicillin in combination with streptomycin for each drug when used in swine, chicken, and turkey feed; and combinations with penicillin and akloamide, arsanilic acid, buquinolate, nihydrazone, reserpine, and zoalene have been deleted.

The Commissioner agrees that the drug use levels were incorrectly stated. The regulations are amended to revise the levels for the combinations of penicillin and streptomycin for swine, chickens, and turkeys. The regulations regarding the use of penicillin with akloamide, arsanilic acid, buquinolate, nihydrazone, reserpine, and zoalene were inadvertently deleted and are reinstated.

f. The preamble to the February 25 document, in item 11, failed to state that the combination of erythromycin with amprolium, alone or with ethopabate, has been evaluated and approved for effectiveness under contemporary scientific criteria. Abbott Laboratories had submitted commitments to resolve the safety issues regarding erythromycin.

The Commissioner agrees, but since a revision of a preamble is not reflected in the regulation itself, no amendment is required.

g. Section 510.515(c) for nicarbazine in combination with penicillin or bacitracin methylene disalicylate does not include claims for weight gain and feed efficiency, and for nicarbazine in combination with bacitracin methylene disalicylate and roxarsone or penicillin and roxarsone does not include claims for weight gain, feed efficiency, and improved pigmentation.

The Commissioner agrees; the regulations are amended to include these claims.

h. In § 510.515(c), the use levels for penicillin with streptomycin for chickens and turkeys should read 2.4 to 30 grams per ton of penicillin and 12 to 150 grams per ton of streptomycin. The indications for use should include a claim for improved weight gain. The use levels for swine should read 1.5 to 45 grams

per ton of penicillin and 7.5 to 225 grams per ton of streptomycin, and the indications for use should include claims for weight gain and feed efficiency.

The Commissioner agrees; the regulations are amended to reflect these changes.

i. In § 558.15(g)(2) for penicillin and streptomycin in chicken and turkey feeds, the use levels should read 2.4 to 30 grams per ton of penicillin and 12 to 150 grams per ton of streptomycin.

The Commissioner notes that these use levels are cross-referenced to § 510.515. With the revision of § 510.515, noted in item h above, no further amendment is required.

8. Pfizer, Inc., noted that § 558.15(g)(1) did not include the use of oxytetracycline in chickens for certain egg production claims, nor use of streptomycin in chickens, turkeys, and swine.

The Commissioner concludes that § 558.15(g)(1) should be amended to include these claims for use of oxytetracycline. In the case of streptomycin in chickens, turkeys, and swine, he finds that the premix is covered by § 558.15(g)(1), and no further revision is required.

9. Salsbury Laboratories responded with the following comments:

a. The proposal published on August 6, 1974 differs considerably from the regulation published February 25, 1976, and therefore should be republished as an amended proposal.

Section 510.515 was published as a proposal on August 6, 1974, as amended in the FEDERAL REGISTER of September 27, 1974 (39 FR 34682), and published as a regulation on February 25, 1976. In response to the proposal, a number of comments were received and evaluated; several comments justified changes in the final regulation and the recodified regulations. The February 25, 1976 document was the subject of a published proposal, and it did not require republication before becoming final.

b. The February 25, 1976 revision of § 510.515 deleted certain sections previously deemed approved, without following due process as set forth in section 512(e) of the act (21 U.S.C. 360b(e)).

The preamble of the February 25 document fully discussed withdrawal of certain approvals and corresponding regulations, and it did not require additional consideration pursuant to section 512(e) of the act.

c. Section 510.515(b)(39) includes provisions of an approval that had been withdrawn without prejudice, notice of which was published in the FEDERAL REGISTER of September 28, 1967 (32 FR 13605).

The Commissioner agrees, and the insertion is deleted.

d. The February 25 document withdraws approvals for sulfantran and akloamide, originally published in the FEDERAL REGISTER of September 9, 1966 (31 FR 11876), although the data supporting this NADA are less than 10 years old and satisfy contemporary standards.

The approvals for sulfantran and alkamide were reevaluated based on

further information available. Upon this evaluation, it was concluded the approval was erroneously withdrawn. The approval is hereby reinstated.

e. The March 15, 1976 recodification does not list Salsbury Laboratories as the sponsor of dimetridazole, nitromide and sulfantran, or roxarsone.

Sponsors of approved NADA's were not identified in the regulations in Part 121 and thus were not included in the recodified regulations.

10. The Upjohn Co. commented in two letters, noting that § 558.15 failed to include nine approved combinations of lincomycin that were included in the August 6, 1974 proposal. In addition, the recodified section concerning melengestrol acetate (21 CFR 558.342) contained incorrect information on use of the drug.

The Commissioner has reviewed these comments and finds that the nine combinations of lincomycin are incorporated in § 558.15(g) (2) by reference since they are currently listed in § 558.325 (21 CFR 558.325). Concerning melengestrol acetate, the recodified regulations for feed use of the drug inadvertently indicated use in complete feeds. The regulation is amended to indicate its use in or on finished feeds.

11. In addition to the preceding amendments, the Commissioner has found that certain other revisions to the regulations are required as follows:

a. A number of animal drugs covered by the regulations (21 CFR Part 121) established under the Food Additives Amendment of 1958 have not been required before recodification to be the subject of an approval pursuant to section 512(m) of the act (21 U.S.C. 360b (m)).

The recodification, being nonsubstantive, should have provided for the continued waiver of the products from the requirement of section 512(m) of the act. This is being provided for by this document.

b. The proposal of August 6, 1974 stated that the tolerance for residues of bacitracin in food from manganese bacitracin is to be revoked on the grounds that the antibiotic is no longer being marketed. After publication of the proposal, approval for the use of bacitracin was withdrawn at the request of the sponsor, by publication in the FEDERAL REGISTER of September 19, 1974 (39 FR 33723). The tolerances for bacitracin and manganese bacitracin residues in foods are deleted by this document.

c. The regulation providing for the use of roxarsone (21 CFR 558.530) does not include a cross-reference covering its use in combination with bambamycins (21 CFR 558.95), a previously approved combination. Section 558.530 is amended to include the cross-reference.

d. The designation of Commercial Solvents Corp. in § 558.15 is changed to I.M.C. Chemical Group, Inc., to reflect a change in company name. The change is

consistent with that published in the FEDERAL REGISTER of July 23, 1976 (41 FR 30326).

e. The designation of S. B. Penick & Co. is changed to A. L. Laboratories to reflect a change in sponsorship. The change is consistent with that published in the FEDERAL REGISTER of December 3, 1976 (41 FR 53002).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701 (a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Parts 510, 556, and 558 are amended as follows:

#### PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.515 by adding paragraph (b) (29), which had been inadvertently deleted; designating paragraphs (b) (30)-(37) as reserved; deleting paragraph (b) (39) and designating paragraph (b) (39)-(51) as re-

served; and by revising items 1, 3, 6, and 7 in the table in paragraph (c) to read as follows:

§ 510.515 Animal feeds bearing or containing new animal drugs subject to the provisions of section 512(n) of the act.

(b) \* \* \*

(29) It is intended for use solely as an aid in reducing the incidence of bacterial diarrhea in laboratory mice; its labeling bears adequate directions and warnings for such use; and it contains not less than 100 grams of chlortetracycline per ton of feed.

(30)-(37) [Reserved]

(39)-(51) [Reserved]

(c) \* \* \*

Product	Species	Use levels	Indications for use
1. Nicarbazin.....	Chickens.....	0.01 to 0.02 pct.....	For use in the prevention of outbreaks of coccidiosis in poultry flocks; growth promotion and feed efficiency.
Procaine penicillin.....	do.....	2.4 to 50 g/ton.....	
3. Nicarbazin.....	do.....	0.01 to 0.02 pct.....	For use as an aid in the prevention of coccidiosis in poultry flocks; growth promotion and feed efficiency; improving pigmentation.
Bacitracin methylene.....	do.....	4 to 50 g/ton.....	
dianalicylate.	do.....	0.0025 to 0.005 pct.....	
β-nitro-4-hydroxy-phenylarsonic acid.	do.....	0.0025 to 0.005 pct.....	
6. Penicillin.....	Chickens and turkeys.....	2.4 to 30 g/ton.....	For use as a treatment for complicated chronic respiratory disease (air sac infection), infectious sinusitis, blue comb (nonspecific infectious enteritis, mud fever), and hexamitiasis in poultry; as an aid in maintaining or increasing egg production of chickens, hatchability of eggs, prevention of early mortality of chicks when due to organisms that are sensitive to streptomycin and penicillin; and for increased weight gain and improving feed efficiency.
Streptomycin.....	do.....	12 to 150 g/ton.....	
7. Penicillin.....	Swine.....	1.5 to 45 g/ton.....	For use in the prevention and treatment of bacterial swine enteritis; for increased weight gain and improved feed efficiency.
Streptomycin.....	do.....	7.5 to 225 g/ton.....	

#### PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOODS

2. Part 556 is amended by revising § 556.70 to read as follows:

##### § 556.70 Bacitracin.

Tolerances for residues of bacitracin from zinc bacitracin or bacitracin methylene disalicylate are established at 0.5 part per million (0.02 unit per gram), negligible residue, in uncooked edible tissues of cattle, swine, chickens, turkeys, pheasants, and quail, and in milk and eggs.

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. Part 558 is amended as follows:

a. In § 558.15, by amending paragraph (g) (1) by changing the names S. B.

Penick & Co. to A.L. Laboratories, Inc., by establishing a separate entry for Thompson-Hayward Chemical Co., for use in chickens, turkeys and quail only, and by adding between the entries for Hoffman-LaRoche, Inc., and Pfizer, Inc., two new separate entries for Pfizer, Inc.; and by amending paragraph (g) (2) by changing the name "Commercial Solvents Corp." to "IMC Chemical Group, Inc.," and in the entry for "Merck Sharp & Dohme Research Labs," by changing the "do" under the "Species" column to "chickens" as follows:

§ 558.15 Antibiotic, nitrofurans, and sulfonamide drugs in the feed of animals.

(g) \* \* \*

(1) \* \* \*

Drug sponsor	Drug premix	Species	Use levels	Indications for use
IMC Chemical Group, Inc.	Zinc bacitracin	Chickens, turkeys, swine, pheasants, and quail. Cattle.	Sec. 558.78	Sec. 558.78.
Thompson-Hayward Chemical Co.	do	Chickens, turkeys, pheasants, and quail.	do	Do.
A. I. Laboratories, Diamond Shamrock Chemical Co.	Bacitracin methylene disalicylate.	Chickens, turkeys, and swine.	Sec. 558.76	Sec. 558.76.
Pfizer, Inc.	Oxytetracycline	Cattle	do	Do.
		Chickens	10 to 50 g/ton.	As an aid in increasing egg production. To extend period of high egg production, to improve feed efficiency, to improve fertility, and to improve egg production and feed efficiency in presence of disease and at time of stress; as an aid in maintaining and improving hatchability where birds are suffering stress from moving, vaccination, culling, extreme temperature change, and worming; to improve livability of progeny when losses are due to oxytetracycline-susceptible organisms; to improve egg shell quality.
			50 to 100 g/ton.	
Do	do	do	do	

(g) \* \* \*  
(2) \* \* \*

Drug sponsor	Drug ingredient	Species	Use levels	Indications for use
IMC Chemical Group, Inc.	Zinc bacitracin	do	4 to 50 g/ton	Prevention of coccidiosis. Growth promotion and feed efficiency. Sec. 558.78.
Merck, Sharp & Dohme Research Lab.	Amprolium	Chickens	0.125 to 0.025 pct.	Sec. 558.55 or 558.58 and 558.530.

b. In § 558.55 by revising paragraph (c) and by amending paragraph (e) (2) in the table by adding in alphabetical sequence new subitems to items (i), (ii), and (iv) as follows:

§ 558.55 Amprolium.

(c) *Special considerations.* (1) Do not use in feeds containing bentonite.

(2) Finished feeds containing amprolium as the sole drug, processed from feed

supplements containing not more than 0.05 percent amprolium, and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*  
(2) \* \* \*

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) * * *	Hygromycin B 8 to 12	Replacement chickens; development of active immunity to coccidiosis; control of infestation of large round worms ( <i>Ascaris pulli</i> ), cecal worms ( <i>Heterakis gallinae</i> ), and capillary worms ( <i>Capillaria obliquata</i> ).	Feed according to subtable in item (i).	* * *
(ii) * * *	Hygromycin B 8 to 12	Broiler chickens; prevention of coccidiosis caused by <i>Eimeria tenella</i> only; control of infestation of large round worms ( <i>Heterakis gallinae</i> ), and capillary worms ( <i>Capillaria obliquata</i> ).	Feed according to subtable in item (ii).	* * *
(iv) * * *	Arsanilic acid 90 (0.01 pct) plus erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improved pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.	* * *
	Hygromycin B 8 to 12	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of infestation of large round worms ( <i>Heterakis gallinae</i> ) and capillary worms ( <i>Capillaria obliquata</i> ).	Feed according to subtable in item (i).	* * *

In § 558.58, by adding paragraph (c) and revising paragraph (e) (1) as follows: The introductory text of (e) (1) is revised; items (i), (ii), and (iii) in the table are redesignated as (ii), (iii), and (iv), respectively; new item (i) is added to the table; a new subitem is added to redesignated item (ii); two new subitems are added to redesignated item (iii); in redesignated item (iii) in the entry "Bacitracin 4 to 50" in the "Limitations" column, after the phrase "as bacitracin methylene disalicylate

as provided by No. 046573" the phrase "or bacitracin zinc as provided by No. 012769" is inserted; and in the entry in redesignated item (iii) for "Bacitracin 5 to 35 plus roxarsone 34 (0.00375%)" in the "Limitations" column, after the phrase "as bacitracin methylene disalicylate as provided by No. 046573" the phrase "or bacitracin zinc as provided by No. 012769" is inserted, as follows:

§ 558.58 Amprolium and ethopabate.

(c) *Special considerations.* Finished feeds containing amprolium and ethopabate as the sole drugs, processed from feed supplements containing not more than 0.05 percent amprolium and 0.016 percent ethopabate, and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) *Conditions of use.* (1) It is used in complete feed for chickens as follows:

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) Amprolium 113.5 (0.0125 pct) and ethopabate 3.6 (0.0004 pct).		Broiler chickens as an aid in the prevention of coccidiosis.	Not for laying hens; as sole source of amprolium.	
(ii) Amprolium 113.5 (0.0125 pct) and ethopabate 3.6 (0.0004 pct).	Bambermycins 2 to 3 plus roxarsone 22.8 to 34.1 (0.0025 pct. to 0.00375 pct).	Broiler chickens; as an aid in the prevention of coccidiosis, for increased rate of weight gain, improved feed efficiency, and pigmentation.	Feed continuously as the sole ration; as sole source of amprolium and organic arsenic; amprolium and ethopabate as provided by No. 000006 in sec. 510.600(c) of this chapter, roxarsone by No. 017210, bambermycins by No. 000039; withdraw 5 d before slaughter.	
	Lincomycin 2 to 4.	Broiler chickens; for increase in rate of weight gain; improved feed efficiency; as an aid in the prevention of coccidiosis.	Not for laying chickens; as lincomycin hydrochloride monohydrate; as sole source of amprolium.	
	Lincomycin 2 to 4 plus roxarsone 45.4 (0.005 pct). Roxarsone 45.4 (0.005 pct).	Broiler chickens; for increase in rate of weight gain; improved feed efficiency and pigmentation; as an aid in the prevention of coccidiosis. Broiler chickens; to aid in prevention of coccidiosis where severe exposure to coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur; for increased rate of weight gain in broiler chickens raised in floor pens.	Do not feed to laying chickens; as sole source of amprolium; withdraw 5 d before slaughter; as sole source of organic arsenic; as erythromycin thiocyanate.	
(iii) Amprolium 113.5 (0.0125 pct) and ethopabate 36.3 (0.004 pct).		Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur.	Not for chickens over 16 weeks of age.	
	Arsenic acid 90 (0.01 pct) plus erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improve pigmentation.	Not for laying hens; withdraw 5 d before slaughter; as sole source of organic arsenic; as erythromycin thiocyanate.	
	Bacitracin 4 to 50.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; to aid in prevention of coccidiosis where severe exposure to coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur; for increased rate of weight gain in broiler chickens raised in floor pens.	Not for chickens over 16 weeks of age, do not feed to laying chickens; as sole source of amprolium; not for use as a treatment for coccidiosis; as bacitracin methylene disalicylate as provided by No. 046573 or bacitracin zinc as provided by No. 012769 in sec. 510.600(c) of this chapter; feed as the sole ration from the time chickens are placed on litter until past the time when coccidiosis is ordinarily a hazard; combination as provided by No. 000006 in sec. 510.600(c) of chapter.	
	Bacitracin 5 to 35 plus roxarsone 34 (0.00375 pct).	Broiler chickens; for increased rate of weight gain and as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur in broiler chickens raised in floor pens.	Do not feed to laying chickens; withdraw 5 d before slaughter; as sole source of amprolium and organic arsenic; do not use as a treatment for outbreaks of coccidiosis; feed as the sole ration from time chickens are placed on litter until past the time when coccidiosis is ordinarily a hazard; amprolium and ethopabate as provided by No. 000006 in sec. 510.600(c) of this chapter; bacitracin methylene disalicylate as provided by No. 046573 or bacitracin zinc as provided by No. 012769 in sec. 510.600(c) of this chapter; roxarsone as provided by No. 017210 in sec. 510.600(c) of this chapter; combination as provided by No. 000006 in sec. 510.600(c) of this chapter.	
	Bacitracin 20 to 35 plus roxarsone 34 (0.00375 pct).	Broiler chickens; for increased rate of weight gain, improved feed efficiency, and as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur in broiler chickens raised in floor pens.	Do not feed to laying chickens; withdraw 5 d before slaughter; as sole source of amprolium and organic arsenic; do not use as a treatment for outbreaks of coccidiosis; feed as the sole ration from time chickens are placed on litter until past the time when coccidiosis is ordinarily a hazard; amprolium and ethopabate as provided by No. 000006 in sec. 510.600(c) of this chapter; bacitracin methylene disalicylate as provided by No. 000794 in sec. 510.600(c) of this chapter; roxarsone as provided by No. 017210 in sec. 510.600(c) of this chapter; combination as provided by No. 000006 in sec. 510.600(c) of this chapter.	
	Bambermycins 1 to 3.	Broiler chickens; as an aid in the prevention of coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur; for increased rate of weight gain, and improved feed efficiency.	Feed continuously as the sole ration as sole source of ethopabate as provided by No. 000006 in sec. 510.600(c) of this chapter, bambermycins as provided by No. 000039 in sec. 510.600(c) of this chapter.	
	Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025 pct to 0.00375 pct).	Broiler chickens; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from <i>Eimeria acerrulina</i> , <i>E. maxima</i> , and <i>E. brunetti</i> is likely to occur; for increased rate of weight gain; improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration; as source of amprolium and organic arsenic; amprolium and ethopabate as provided by No. 000006 in sec. 510.600(c) of this chapter, roxarsone by No. 017210, bambermycins by No. 000039. Withdraw 5 d before slaughter.	
Erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.	Not for laying hens; withdraw 24 hours before slaughter; erythromycin thiocyanate.		

d. In § 558.60, by adding paragraph (c) to read as follows:

§ 558.60 Arsanilate sodium.

(c) *Special considerations.* Finished feeds containing arsanilate sodium as the sole drug and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

e. In § 558.62 by adding paragraph (c) and redesignating paragraph (e) (2) (iii) and (iv) as (e) (2) (v) and (vi), respectively, and adding new paragraph (e) (2) (iii) and (iv), to read as follows:

§ 558.62 Arsanilic acid.

(c) *Special considerations.* Finished feeds containing arsanilic acid as the sole drug and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*

(2) \* \* \*

(iii) Bacitracin zinc in accordance with § 558.78.

(iv) Bacitracin and zoalene in accordance with § 558.680.

(v) Buquinolate in accordance with § 558.105.

(vi) Zoalene in accordance with § 558.680.

f. In § 558.76, by revising paragraph (c), by redesignating items (ii), (iii), (iv), and (v) of the table in paragraph (e) (1) as items (iii), (iv), (v), (vi) respectively, and adding new item (ii), and by revising paragraph (e) (3), to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

(c) *Special consideration.* (1) The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

(2) Finished feeds containing bacitracin methylene disalicylate and conforming to the requirements of paragraph (e) (1) and (e) (2) are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*

(1) \* \* \*

(iv) Diethylstilbestrol in accordance with § 558.225.

(v) Hygromycin B in accordance with § 558.274.

(vi) Monensin in accordance with § 558.355.

(vii) Zoalene in accordance with § 558.680.

h. In § 558.120, by adding paragraph (c) to read as follows:

§ 558.120 Carbarosone (not U.S.P.).

(c) *Special considerations.* Finished feeds containing carbarosone as a sole drug, processed from feed supplements containing not more than 0.225 percent carbarosone and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

i. In § 558.126, the introductory text of paragraph (e) is revised to read as follows:

§ 558.126 Chlormadinone acetate.

(e) *Conditions of use.* It is used in or on feed for beef heifers and beef cows as follows:

j. In § 558.128, paragraph (c) is added; paragraph (e) (2) is redesignated as (e) (3) as amended by revising the introductory text, the heading of Table 2, and item (vi) of Table 2; and paragraph (e) (3) is redesignated as paragraph (e) (4); and new paragraph (e) (2) is added to read as follows:

§ 558.128 Chlortetracycline.

(c) *Special considerations.* Finished feeds containing chlortetracycline and conforming to the requirements of paragraph (e) (1), (2), and (3) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*

(2) It is used in the feed for laboratory mice as follows:

(i) *Amount.* Not less than 100 grams per ton of feed.

(ii) *Indications for use.* As an aid in reducing the incidence of bacterial diarrhea.

(3) It is used in feeds as follows:

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(ii) 5 to 20		Quali; not over 5 weeks of age; growth promotion and feed efficiency.		

(3) It is used as bacitracin methylene disalicylate in accordance with the provisions of the section in the combinations provided as follows:

(i) Amprolium in accordance with § 558.55.

(ii) Amprolium with ethopabate in accordance with § 558.58.

(iii) Arsanilic acid with zoalene in accordance with § 556.680.

(iv) Carbarosone (not U.S.P.) in accordance with § 558.120.

(v) Diethylstilbestrol in accordance with § 558.225.

(vi) Hygromycin B in accordance with § 558.274.

(vii) Monensin in accordance with § 558.355.

g. In § 558.78, by revising paragraph (c) and by redesignating paragraph (e) (3) (iii) and (iv) as (e) (3) (v) and (e) (3) (vii), respectively, and by adding new

paragraphs (e) (3) (iii), (iv), and (vi), to read as follows:

§ 558.78 Bacitracin zinc.

(c) *Special considerations.* (1) The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

(2) Finished feeds containing bacitracin zinc and conforming to the requirements of paragraph (e) (1) and (2) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*

(3) \* \* \*

(iii) Arsanilic acid and zoalene in accordance with § 558.680.

## RULES AND REGULATIONS

Chlortetra- cycline	Combination in milli- grams per head per day	Indications for use	Limitations	Sponsor
(vi) 85.....	.....	For horses up to 1 year of age; Do not slaughter for growth promotion and feed efficiency.	Do not slaughter for food purposes.	.....

k. In § 558.262, by adding paragraph (c) to read as follows:

§ 558.262 Furazolidone.

(c) *Special considerations.* Finished feeds containing furazolidone are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

1. In § 558.274, paragraphs (c) and (e) (2) are added to read as follows:

§ 558.274 Hygromycin B.

(c) *Special considerations.* Complete chicken feeds containing hygromycin B as a sole drug, processed from feed supplements containing not more than 32 grams per ton hygromycin B, and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*

(2) Hygromycin B may also be used in combination with:

(i) Amprolium in accordance with § 558.55.

(ii) Zoalene in accordance with § 558.680.

m. In § 558.342, the introductory text of paragraph (e) is revised to read as follows:

§ 558.342 Melengestrol acetate.

(e) *Conditions of use.* It is used in or on finished feed for heifers as follows:

n. In § 558.370, paragraph (c) is added to read as follows:

§ 558.370 Nitrofurazone.

(c) *Special considerations.* Finished feeds containing nitrofurazone as the sole drug are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

o. In § 558.430, paragraph (c) is added to read as follows:

§ 558.430 Nystatin.

(c) *Special considerations.* Finished feeds containing nystatin as the sole drug are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

p. In § 558.460, paragraph (d) is added, paragraph (f) (2) (v) is redesignated as (f) (2) (vi) and new paragraph (f) (2) (v), (vii), (viii), (ix), and (x) are added to read as follows:

§ 558.460 Penicillin.

(d) *Special considerations.* Finished feeds containing penicillin and conforming to the requirements of paragraph (f) (1) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(f) \* \* \*

(2) \* \* \*

(v) Buquinolate in accordance with § 558.105.

(vi) Hygromycin B in accordance with § 558.274.

(vii) Nihydrazone in accordance with § 558.368.

(viii) Reserpine in accordance with § 558.505.

(ix) Roxarsone and zoalene in accordance with § 558.680.

(x) Zoalene in accordance with § 558.680.

q. In § 558.530, paragraphs (e) (4) (xvi) and (xvii) are added to read as follows:

§ 558.530 Roxarsone.

(e) \* \* \*

(4) \* \* \*

(xvi) Penicillin and zoalene in accordance with § 558.680.

(xvii) Bambermycins alone and in combination in accordance with § 558.95.

§ 558.625 [Amended]

r. In § 558.625 *Tylosin* by deleting paragraph (f) (2) and reserving it for future use.

s. In § 558.680, paragraph (c) is added and paragraph (e) (1) is amended in the table by alphabetically inserting new items to read as follows:

§ 558.680 Zoalene.

(c) *Special considerations.* Complete poultry feeds containing zoalene as a sole drug, processed from feed supplements containing not more than 0.0375 percent zoalene, and conforming to the requirements of paragraph (e) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(e) \* \* \*

(1) \* \* \*



Zoalene in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor									
(i) 36.3 to 113.5 (0.004 pct to 0.0125 pct).	Hygromycin B 8 to 12...	Replacement chickens; development of active immunity to coccidiosis; control of infestation of large round worms ( <i>Ascaris galli</i> ), cecal worms ( <i>Heterakis gallinae</i> ), and capillary worms ( <i>Capillaria obsignata</i> ).	In complete feed only; grower ration not to be fed to birds over 14 weeks of age; as follows:	***									
			<table border="1"> <thead> <tr> <th>Growing conditions</th> <th>Starter ration (grams per ton)</th> <th>Grower ration (grams per ton)</th> </tr> </thead> <tbody> <tr> <td>Severe exposure.</td> <td>113.5 (0.0125 pct)</td> <td>75.4 to 113.5 (0.0083 pct to 0.0125 pct).</td> </tr> <tr> <td>Light to moderate exposure.</td> <td>75.4 to 113.5 (0.0083 pct to 0.0125 pct).</td> <td>36.3 to 75.4 (0.004 pct to 0.0083 pct).</td> </tr> </tbody> </table>	Growing conditions	Starter ration (grams per ton)	Grower ration (grams per ton)	Severe exposure.	113.5 (0.0125 pct)	75.4 to 113.5 (0.0083 pct to 0.0125 pct).	Light to moderate exposure.	75.4 to 113.5 (0.0083 pct to 0.0125 pct).	36.3 to 75.4 (0.004 pct to 0.0083 pct).	
Growing conditions	Starter ration (grams per ton)	Grower ration (grams per ton)											
Severe exposure.	113.5 (0.0125 pct)	75.4 to 113.5 (0.0083 pct to 0.0125 pct).											
Light to moderate exposure.	75.4 to 113.5 (0.0083 pct to 0.0125 pct).	36.3 to 75.4 (0.004 pct to 0.0083 pct).											
(ii) 113.5 (0.0125 pct)....	Arsanille acid 90 (0.01 pct) plus bacitracin 4 to 50.	Broiler chickens; prevention and control of coccidiosis; improving pigmentation; growth promotion and feed efficiency.	Withdraw 5 d before slaughter; as sole source of organic arsenic; as bacitracin methylene disalicylate.	***									
	Chlortetracycline 200...	Broiler chickens; prevention and control of coccidiosis; control of synovitis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride.										
	Hygromycin B (8 to 12)...	Broiler chickens; prevention and control of coccidiosis; control of infestation of large round worms ( <i>Ascaris galli</i> ), cecal worms ( <i>Heterakis gallinae</i> ), and capillary worms ( <i>Capillaria obsignata</i> ).											
	Penicillin 2.4 to 50 plus roxarsone 22.7 to 45.4 (0.0025 pct to 0.005 pct).	Broiler chickens; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic; as procaine penicillin.										

Effective date: This regulation becomes effective April 8, 1977.

(Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)).)

Dated: March 11, 1977.

JOSEPH P. HILE,  
Associate Commissioner  
for Compliance.

[FR Doc.77-9874 Filed 4-7-77; 8:45 am]

[Docket No. 76N-0228]

**PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOODS**

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

**Nihydrazone (NF-64); Revocation**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food and Drug Administration (FDA) revokes certain regulations that provide for the use of animal drugs containing nihydrazone (NF-64) alone and in certain combinations. The approvals are being withdrawn in a corresponding document (FDA Docket No. 76N-0233, appearing elsewhere in this issue of the FEDERAL REGISTER) because nihydrazone is not shown to be safe for use under either the approved or currently labeled conditions of use.

EFFECTIVE DATE: April 8, 1977.

**FOR FURTHER INFORMATION CONTACT:**

David P. Ducharme, Bureau of Veterinary Medicine (HFV-140), Food and

Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-2280).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 17, 1976 (41 FR 34908), the Director of the Bureau of Veterinary Medicine issued a notice of opportunity for hearing on a proposal to withdraw the approval of certain new animal drug applications (NADA's) that provide for the use of nihydrazone for treating food-producing animals. In the same FEDERAL REGISTER (41 FR 34884), the Director proposed to revoke the Code of Federal Regulations (CFR) provisions for the use of nihydrazone in animal feeds.

The document withdrawing approvals for nihydrazone, which appears elsewhere in this FEDERAL REGISTER, discusses fully the basis upon which the subject applications are being withdrawn.

(Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Parts 556 and 558 are amended as follows:

**§ 556.450 [Revoked]**

1. By revoking § 556.450 *Nihydrazone*.

**§ 558.15 [Amended]**

2. In § 558.15 *Antibiotic, nitrofurans, and sulfonamide drugs in the feed of animals* is amended in the table in paragraph (g) (1) by deleting the last entry, which provides for nihydrazone, and in the table in paragraph (g) (2) by deleting the entries under "Norwich Pharmaceutical Co." for nihydrazone and procaine penicillin, nihydrazone and chlortetracycline, and nihydrazone and bacitracin methylene disalicylate or zinc bacitracin.

**§ 558.368 [Revoked]**

3. By revoking § 558.368 *Nihydrazone*.

Effective date: This amendment shall be effective April 8, 1977.

(Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b).)

Dated: April 1, 1977.

JOSEPH P. HILE,  
Associate Commissioner  
for Compliance.

[FR Doc.77-10374 Filed 4-7-77; 8:45 am]

[FRL 710-7; FAP 6H5143/T23]

**PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY**

**Butachlor**

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This rule permits the use of butachlor in an experimental program. The program involves the application of the herbicide to growing rice. This amendment was requested by Monsanto Co. in a feed additive petition. This rule permits the marketing of rice hulls and rice bran while further data on butachlor is collected.

EFFECTIVE DATE: Effective on April 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Ms. Libby Zink, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460 (202/755-4851).

**SUPPLEMENTARY INFORMATION**

On August 20, 1976, the Environmental Protective Agency (EPA) announced (41 FR 40100) that Monsanto Agricultural Products Co., 800 N. Lindbergh Blvd., St. Louis, Mo. 63116, had filed a food additive petition (FAP 6H5143). This petition proposed that 21 CFR 561 be amended by establishing a food additive regulation permitting the use of the herbicide butachlor (*N*-(butoxymethyl)-2-chloro-2',6'-diethylacetanilide) in a proposed experimental program involving application of the herbicide to growing rice with tolerance limitations of 1 ppm for residues of the herbicide in rice hulls and 0.5 ppm in rice bran in accordance with an experimental use permit that is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.). Butachlor is not cur-

rently regulated under 21 CFR 561. No comments were received by the Agency in response to this notice of filing.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit issued under FIFRA.

The scientific data considered in establishing this regulation consisted of four mutagenicity tests (host-mediated assay, reverse mutation, recombination assay, and dominant lethal), an acute rat toxicity test, and a subacute rabbit toxicity test. An adequate analytical method (gas-liquid chromatography) is available for enforcement purposes, and there is no reasonable expectation of residues in eggs, meat, milk, or poultry from the proposed use as delineated in 40 CFR 180.6(a)(3). A possible daily acceptable intake of 0.03 mg/day has been established for the proposed use; the no-effect level based on a 90-day rat study is 20 ppm or 1 mg/kg/day.

Questions that remain to be resolved are on the three-generation reproduction study, 18-month carcinogenic study, two-year chronic feeding study in dogs and rats as well as other general toxicity questions, all of which will be answered when the petitioner applies for permanent tolerances. At that time, an improved analytical method with lower controls and better recoveries, additional residue data, and more data on the propensity of butachlor to transfer to eggs, meat, milk, and poultry will be required. For the purposes of this experimental use, however, the present information is considered adequate. It has further been determined that since residues of the pesticide may result in rice hulls and rice bran from the agricultural use provided for in the experimental use permit, the feed additive regulation should be established and should include tolerance limitations.

Accordingly, a feed additive regulation is established as set forth below. (A notice also appears in today's FEDERAL REGISTER announcing the establishment of temporary tolerances of the pesticide

on the raw agricultural commodities rice and rice straw.)

Any person adversely affected by this regulation may, on or before May 9, 1977, file written objections with the Hearing Clerk, EPA, Rm. 1019, East Tower, 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on April 8, 1977, 21 CFR 561 is amended as set forth below.

Dated: April 1, 1977.

EDWIN L. JOHNSON,  
Deputy Assistant Administrator  
for Pesticide Programs.

(Sec. 408(c)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).)

21 CFR 561 is amended by adding § 561.55 as follows:

§ 561.55 Butachlor.

Residues of the herbicide butachlor (*N*-(butoxymethyl)-2-chloro-2',6'-diethylacetanilide) may be present in the following feed only as a result of application of the herbicide to the growing agricultural commodity in an experimental use program which expires April 1, 1978. Residues not in excess of these tolerances remaining after expiration of this experimental use program will not be considered actionable if the herbicide has been legally applied during the term of and in accordance with the provisions of the experimental use permit and feed additive tolerances.

	Parts per million
Rice, bran.....	0.5
Rice, hulls.....	1.0
* * * * *	

[FR Doc.77-10428 Filed 4-7-77;8:45 am]

# proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 918]

[Docket No. AO-162-A5]

### FRESH PEACHES GROWN IN GEORGIA

Recommended Decision and Opportunity To File Written Exceptions to Proposed Further Amendment of Marketing Agreement and Order

#### Correction

In FR Doc. 77-7214, appearing at page 13557 of the issue for Friday, March 11, 1977:

1. In the third line of the second full paragraph, third column, page 13558, "nicurred" should read "incurred".

2. In the ninth line of the paragraph numbered (3), middle column, page 13559, "upon hearings" should read "upon which hearings".

3. In § 918.10(a), third column, page 13559, in the second line, "Quitman Coffee" should read "Quitman, Coffee"; and in the thirteenth line, "Camden Lowndes" should read "Camden, Lowndes".

## SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-13420; File No. S7-613]

### RECORDS WITH RESPECT TO BENEFICIAL OWNERSHIP OF ACCOUNTS CARRIED BY BROKERS AND DEALERS

AGENCY: Securities and Exchange Commission.

ACTION: Extension of Time for Comment.

SUMMARY: The time for comment on a proposed amendment to Securities Exchange Act Rule 17a-3(a)(9) is being extended. The comment period expires on April 1, 1977.

DATES: Comments must be received on or before May 2, 1977.

ADDRESSES: Interested persons should submit six copies of their written views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and should refer to File No. S7-613. All submissions will be made available for public inspection in the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C.

#### FOR FURTHER INFORMATION CONTACT:

Charles M. Horn, Esq., Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Com-

mission, Washington, D.C. 20549, 202/755-8747.

#### SUPPLEMENTARY INFORMATION:

On January 27, 1976, the Commission published Securities Exchange Act Release No. 12055,<sup>1</sup> which, among other things, proposed for comment an amendment to Securities Exchange Act Rule 17a-3(a)(9), 17 CFR 240.17a-3(a)(9). Interested persons were invited to submit written views and comments on the proposed amendment not later than May 1, 1976.<sup>2</sup>

Subsequently, the Commission instituted a general inquiry into the rules of national securities exchanges relating to foreign access<sup>3</sup> and disapproved two rules of the New York Stock Exchange, Inc.<sup>4</sup> establishing certain restrictions on foreign access. In both instances consideration was given to the proposed amendment to Rule 17a-3(a)(9).

On January 10, 1977, the Commission republished for comment the proposed amendment to Rule 17a-3(a)(9)<sup>5</sup> to clarify, in some respects, the intended operation of the proposed amendment. Interested persons were again invited to submit comments with an initial deadline of March 4, 1977, that was subsequently extended to April 1, 1977.<sup>6</sup>

The Securities Industry Association has requested a further thirty-day extension, based on the "extremely serious implications of the Commission's proposal."<sup>7</sup> While the comment period will be somewhat longer than customary,<sup>8</sup> the Commission recognizes that resolution of difficult policy issues may not always be possible on rigid time schedules and that, therefore, it should not in all cases attempt or be required to act on every rule proposal within a set

<sup>1</sup> 41 FR 8075 (Feb. 24, 1976).

<sup>2</sup> On April 28, 1976, the Commission extended the comment period to June 15, 1976. Securities Exchange Act Release No. 12378, 41 FR 18432 (May 4, 1976).

<sup>3</sup> Securities Exchange Act Release No. 12157 (Mar. 2, 1976), 41 FR 10862 (Mar. 12, 1976).

<sup>4</sup> Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976).

<sup>5</sup> Securities Exchange Act Release No. 13149, 42 FR 3312 (Jan. 18, 1977).

<sup>6</sup> Securities Exchange Act Release No. 13347 (Mar. 9, 1977), 42 FR 14737 (Mar. 16, 1977).

<sup>7</sup> Letter dated March 25, 1977, from the Securities Industry Association. The SIA indicated that, on February 24, 1977, it had "hired special counsel to assist in the preparation of detailed comments" and that several more weeks will be required to complete this process [of research and drafting] and for review by the appropriate SIA committees.

<sup>8</sup> With the extension granted hereby, 463 days will have elapsed from the time the rule amendment was first proposed.

period of time.<sup>9</sup> Accordingly, the Commission, in the interest of assuring that the comments of all interested persons will receive maximum consideration, hereby extends the comment period for the proposed amendment to Rule 17a-3(a)(9) until May 2, 1977.

By the Commission.

Dated: March 31, 1977.

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 77-10466 Filed 4-7-77; 8:45 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 431, 514]

[Docket No. 77P-0002]

### CERTIFICATION OF ANTIBIOTIC DRUGS

Revision of Sampling Procedures

#### Correction

In FR Doc. 77-9036 appearing at page 16638 in the issue for Tuesday, March 29, 1977, the third line of the second full paragraph in the third column should read: "(21 U.S.C. 357, 360b(n)) and under au- \* \* \*"

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

### DEFINITION OF THE TERM "CHURCH PLAN"

Proposed Rule Making

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the determination of whether a retirement plan is a church plan. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations would provide persons responsible for the administration of retirement plans with the guidance needed to determine whether their plan is entitled to the benefits afforded church plans under that Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 23, 1977. The amend-

\* Cf. Securities Exchange Act Release No. 13347 (Mar. 9, 1977), 42 FR 14737 (Mar. 16, 1977), n. 6.

ments are proposed to be effective on September 2, 1974.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR; T, Washington, D.C. 20224.

#### FOR FURTHER INFORMATION CONTACT:

David Jacobson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3923).

#### BACKGROUND

#### SUPPLEMENTARY INFORMATION:

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 414 (e) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1015 of the Employee Retirement Income Security Act of 1974 (88 Stat. 925) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

#### EXPLANATION OF PROPOSED REGULATIONS

Section 414 (e) provides the requirements for what constitutes a church plan. Essentially a church plan is a plan established and maintained by a church for its employees. However, a plan maintained primarily for employees employed in connection with an unrelated trade or business is not a church plan. The regulations provide rules for determining when a person is considered primarily employed in connection with an unrelated trade or business. In addition, this document includes rules for determining whether an organization is an agency of a church for purposes of the special transition rule of section 414(e)(3).

#### COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

#### DRAFTING INFORMATION

The principal author of these proposed regulations was David Jacobson of the Legislation and Regulations Division of Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

#### PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

The following sections are inserted in the appropriate place:

#### § 1.414(e) Statutory provisions; definitions and special rules.

##### Sec. 414. Definitions and special rules.

(e) *Church plan*—(1) *In General.* For purposes of this part the term "church plan" means—

(A) A plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501, or

(B) A plan described in paragraph (3).

(2) *Certain unrelated business or multi-employer plans.* The term "church plan" does not include a plan—

(A) Which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or

(B) Which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

(3) *Special temporary rule for certain church agencies under church plan.*

(A) Notwithstanding the provisions of paragraph (2) (B), a plan in existence on January 1, 1974, shall be treated as a church plan if it is established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501.

(B) Subparagraph (A) shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974.

(C) Subparagraph (A) shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

(Sec. 414(e) as added by sec. 1015, Employee Retirement Income Security Act of 1974 (88 Stat. 925).)

#### § 1.414(e)-1 Definition of church plan.

(a) *General rule.* For the purposes of part I of subchapter D of chapter 1 of the Code and the regulations thereunder, the term "church plan" means a plan established and at all times maintained for its employees by a church or by a convention or association of churches (hereinafter included within the term "church") which is exempt from tax under section 501(a), provided that such plan meets the requirements of paragraphs (b) and (if applicable) (c) of this section. If at any time during its existence a plan is not a church plan because of a failure to meet the requirements set forth in this section, it cannot thereafter become a church plan.

(b) *Unrelated businesses*—(1) *In general.* A plan is not a church plan unless it is established and maintained primar-

ily for the benefit of employees (or their beneficiaries) who are not employed in connection with one or more unrelated trades or businesses (within the meaning of section 513).

(2) *Establishment or maintenance of a plan primarily for persons not employed in connection with one or more unrelated trades or businesses.* (i) (A) A plan, other than a plan in existence on September 2, 1974, is established primarily for the benefit of employees (or their beneficiaries) who are not employed in connection with one or more unrelated trades or businesses if on the date the plan is established the number of employees employed in connection with the unrelated trades or businesses eligible to participate in the plan is less than 50 percent of the total number of employees of the church eligible to participate in the plan.

(B) A plan in existence on September 2, 1974, is to be considered established as a plan primarily for the benefit of employees (or their beneficiaries) who are not employed in connection with one or more unrelated trades or businesses if it meets the requirements of both paragraphs (b) (2) (ii) (A) and (B) (if applicable) in either of its first 2 plan years ending after September 2, 1974.

(ii) For plan years ending after September 2, 1974, a plan will be considered maintained primarily for the benefit of employees of a church who are not employed in connection with one or more unrelated trades or businesses if in 4 out of 5 of its most recently completed plan years—

(A) Less than 50 percent of the persons participating in the plan (at any time during the plan year) consist of, and in the same year

(B) Less than 50 percent of the total compensation paid by the employer during the plan year (if benefits or contributions are a function of compensation) to employees participating in the plan is paid to,

employees employed in connection with an unrelated trade or business. The determination that the plan is not a church plan will apply to the second year (within a 5 year period) for which the plan fails to meet paragraph (b) (2) (ii) (A) or (B) (if applicable) and to all plan years thereafter unless, taking into consideration all of the facts and circumstances as described in paragraph (b) (2) (iii) of this section, the plan is still considered to be a church plan. A plan that has not completed 5 plan years ending after September 2, 1974, shall be considered maintained primarily for the benefit of employees not employed in connection with an unrelated trade or business unless it fails to meet paragraphs (b) (2) (ii) (A) and (B) in at least 2 such plan years.

(iii) Even though a plan does not meet the provisions of paragraph (b) (2) (ii) of this section, it nonetheless will be considered maintained primarily for the benefit of employees who are not em-

ployed in connection with one or more unrelated trades or businesses if the church maintaining the plan can demonstrate that based on all of the facts and circumstances such is the case. Among the facts and circumstances to be considered in evaluating each case are:

(A) The margin by which the plan fails to meet the provisions of paragraph (b) (2) (i) of this section, and

(B) Whether the failure to meet such provisions was due to a reasonable mistake as to what constituted an unrelated trade or business or whether a particular person or group of persons were employed in connection with one or more unrelated trades or businesses.

(iv) For purposes of this section, an employee will be considered eligible to participate in a plan if such employee is a participant in the plan or could be a participant in the plan upon making mandatory employee contributions to the plan.

(3) *Employment in connection with one or more unrelated trades or businesses.* An employee is employed in connection with one or more unrelated trades or businesses of a church if a majority of such employee's duties and responsibilities in the employ of the church are directly or indirectly related to the carrying on of such trades or businesses. Although an employee's duties and responsibilities may be insignificant with respect to any one unrelated trade or business, such employee will nonetheless be considered as employed in

connection with one or more unrelated trades or businesses if such employee's duties and responsibilities with respect to all of the unrelated trades or businesses of the church represent a majority of the total of such person's duties and responsibilities in the employ of the church.

(c) *Plans of two or more employers.* The term "church plan" does not include a plan which, during the plan year, is maintained by two or more employers unless—

(1) Each of the employers is a church, that is exempt from tax under section 501(a), and

(2) With respect to the employees of each employer, the plan meets the provisions of paragraph (b) (2) (i) of this section or would be determined to be a church plan based on all the facts and circumstances described in paragraph (b) (2) (iii) of this section.

Thus, if with respect to a single employer the plan does not meet the provision of paragraph (c) (2) of this section the provisions of this paragraph are not met with respect to the entire plan.

(d) *Special rule.* (1) Notwithstanding paragraph (c) (1) of this section, a plan maintained by a church and one or more agencies of such church for the employees of such church and of such agency or agencies, that is in existence on January 1, 1974, shall be treated as a church plan for plan years ending after September 2, 1974, and beginning before January 1, 1983, provided that the plan is described in paragraph (c) of this

section without regard to paragraph (c) (1) of this section, and the plan is not maintained by an agency which did not maintain the plan on January 1, 1974.

(2) For the purposes of section 414(e) and this section, an agency of a church means an organization which is exempt from tax under section 501 and which is either controlled by, or associated with, a church. For example, an organization, a majority of whose officers or directors are appointed by a church's governing board or by officials of a church, is controlled by a church within the meaning of this paragraph. An organization is associated with a church if it shares common religious bonds and convictions with that church.

(e) *Religious orders and religious organizations.* For the purpose of this section the term "church" includes a religious order or a religious organization if such order or organization (1) is an integral part of a church, and (2) is engaged in carrying out the functions of a church, whether as a civil law corporation or otherwise.

(f) *Cross reference.* (1) For rules relating to treatment of church plans, see section 410(d), 411(e), 412(h), 4975(g), and the regulations thereunder.

(2) For rules relating to church plan elections, see section 410(d) and the regulations thereunder.

WILLIAM E. WILLIAMS,  
Acting Commissioner of  
Internal Revenue.

[FR Doc. 77-10471 Filed 4-7-77; 8:45 am]

# notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### FRANCIS MARION UNIT PLAN AND TIMBER MANAGEMENT PLAN

##### 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 Francis Marion National Forest Unit Plan and Timber Management Plan, Francis Marion and Sumter National Forests, USDA-FS-R8-DES (ADM.) 77-10.

The proposed action is the implementation of a ten year management plan for the 249,412 acre Francis Marion National Forest. The Forest is located in Berkeley and Charleston Counties in South Carolina. The proposed action will provide a desirable balance of resource utilization and protection while responding to the desires of the general public and anticipated future needs.

This draft environmental statement was transmitted to CEQ April 1, 1977. Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, Chief, P.O. Box 2417, Washington, D.C. 20013.

USDA, Forest Service, 1720 Peachtree Street NW., Rm. 804, Atlanta, Georgia 30309.

U.S. Forest Service, Francis Marion and Sumter National Forests, 1801 Assembly Street, Columbia, South Carolina 29201.

A limited number of single copies are available upon request to Forest Supervisor, Francis Marion and Sumter National Forests, 1801 Assembly Street, Columbia, South Carolina 29201.

Comments are invited from the public, and from State and Local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Francis Marion and Sumter National Forests, 1801 Assembly Street, Columbia, South Carolina. Comments must be received by May 30, 1977 in order to be considered in the preparation of the final environmental statement.

Dated: April 1, 1977.

THOMAS W. SEARS,  
Acting Regional,  
Environmental Coordinator.

[FR Doc.77-10430 Filed 4-7-77;8:45 am]

### Rural Electrification Administration

#### MINNKOTA POWER COOPERATIVE

##### Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request for a loan guarantee commitment from the Rural Electrification Administration for Minnkota Power Cooperative of Grand Forks, North Dakota. This loan guarantee commitment will assist in obtaining financing to purchase a 30 percent share in a new 440 MW generating plant to be constructed near Beulah, North Dakota, with associated transmission facilities.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited 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 from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., Room 4310, or at the borrower address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Richter at the address given above. Comments must be received on or before June 7, 1977, to be considered in connection with the proposed action.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 31st day of March 1977.

DAVID A. HAMIL,  
Administrator, Rural  
Electrification Administration.

[FR Doc.77-10297 Filed 4-7-77;8:45 am]

### Soil Conservation Service

#### AQUILLA-HACKBERRY CREEK WATERSHED PROJECT, TEXAS

##### Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Aquilla-Hackberry Creek Watershed project, Hill and Johnson Counties, Texas.

The environmental assessment of this Federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. George C. Marks, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement as described in the negative declaration include the installation of floodwater retarding structures Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 and grade stabilization structure Nos. 11-2 and 11-3.

The environmental assessment file is available for inspection during regular working hours at the following location.

USDA, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main Street, Temple, Texas 76501.

Requests for the negative declaration should be sent to:

P. O. Box 648, Temple, Texas 76501.

No administrative action on implementation of the proposal will be taken until April 25, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 U.S.C. 1001-1008.)

Dated: March 31, 1977.

JOSEPH W. HAAS,  
Assistant Administrator for  
Water Resources, Soil Conservation Service.

[FR Doc.77-10431 Filed 4-7-77;8:45 am]

### SOUTH CLINTON LATERALS WATERSHED PROJECT, OKLAHOMA

#### Availability of Negative Declaration

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the remaining work in the South Clinton Laterals Watershed project, Custer and Washita Counties, Oklahoma.

The environmental assessment of this federal section indicates that the remaining work in the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the remaining work in the project. As a result of these findings, Mr. Roland R. Willis, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for the remaining work in this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works for improvement include conservation land treatment supplemented by five single-purpose floodwater retarding structures.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various Federal, State, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, Farm Road and Brumley Street, Stillwater, Oklahoma, 74074. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation of the proposal will be taken until April 25, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Flood Control Act—Public Law 78-534, 58 Stat. 905.)

Dated: March 31, 1977.

JOSEPH W. HAAS,  
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc.77-10432 Filed 4-7-77;8:45 am]

### CIVIL AERONAUTICS BOARD

[Docket 27573, Agreement C.A.B. 26325,

R-4, and R-5, Order 77-3-166]

### INTERNATIONAL AIR TRANSPORT ASSOCIATION

#### Specific Commodity Rates

Issued under delegated authority March 30, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic

Regulations between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

As set forth in the attachment, the agreement adds several specific commodity rates under existing specific commodity descriptions all reflecting reductions from general cargo rates. The agreement was adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated December 23, 1976.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, it is ordered, That: Agreement C.A.B. 26325, R-4 and R-5, is approved, provided that: (a) Approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publica-

tions; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filings; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,  
Secretary.

Agreement C.A.B.	Specific commodity Item No.	Description and rate <sup>1</sup>
26325 R-4	2502	Babywear, handkerchiefs, ladies gloves, womens undergarments, blouses, handbags, embroideries made in the Philippines and covered by a Philippine export license. 147 c/kg, minimum weight 2,000 kg from Manila to Los Angeles. 184 c/kg, minimum weight 2,000 kg from Manila to New York.
	4204	Parts of agricultural machines and railway cars, parts of automobiles, motorcycles, motorcycles, bicycles, motor sleighs, lampshades, horns, sirens, visors, spotlamps, flashing lights, wheelcaps, mirrors, ashtrays, floor mats, steering wheel covers, instrument sets and panels, keyless ignition switches and safety locks, jacks, windshield wipers, air conditioners, seat belts, seat covers, tire chains and stands, petrol caps, bumper guards, luggage and ski racks, back rests, baby seats, head cushions, automobile lighters, wind deflectors, for use in conjunction with automobiles, motorcycles, motorcycles, bicycles. 234 c/kg, minimum weight 200 kg from Manila to Los Angeles. 270 c/kg, minimum weight 200 kg from Manila to New York.
	7110	Newspaper, magazines and periodicals. 294c/kg, minimum weight 100 kg from Manila to Los Angeles. 244c/kg, minimum weight 100 kg from Manila to New York.
	8202	Toys, games, athletic and sporting goods. 260c/kg, minimum weight 100 kg from Manila to Los Angeles. 297c/kg, minimum weight 100 kg from Manila to New York.
R-5	0326	Fish. 75c/kg, <sup>2</sup> minimum weight 1,000 kgs from Papeete to Honolulu. 83c/kg, <sup>2</sup> minimum weight 1,000 kgs from Papeete to Los Angeles.

<sup>1</sup> Subject to applicable currency conversion factors as shown in tariffs.

<sup>2</sup> Expires Dec. 31, 1977.

[FR Doc.77-10341 Filed 4-7-77;8:45 am]

[Docket 19923, et al; Order 77-4-15]

### LIABILITY AND CLAIMS RULES AND PRACTICES INVESTIGATION

#### Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 4th day of April, 1977.

By Order 77-3-61, March 10, 1977, its supplemental opinion and order on reconsideration in Docket 19923, the Board ordered the air carrier parties, within 120 days of the date of service of that order, to cancel all tariffs and terminate all practices inconsistent with the Board's opinions.<sup>1</sup> It also ordered the air

carrier parties, within 120 days of the order's service, to file, post and publish tariffs conforming to the Board's opinions. It has, however, come to the Board's attention that the language of paragraph 2 may be ambiguous and subject to interpretation with respect to the required effective date of revised tariffs.<sup>2</sup>

all practices which are inconsistent with the opinions herein;".

<sup>2</sup> Numbered paragraph 2, p. 39 reads, "That the air carrier parties to this investigation shall, within 120 days of the date of service of this order, file, post and publish tariffs conforming to the opinions herein and effective on not less than 60 days' notice;".

It is suggested that although paragraph 1 orders cancellation within 120 days of service of Order 77-3-61, the phrase "and effective on 60 days notice" at the end of paragraph 2 would permit air carriers to file revised tariffs effective 180 days after the date of service.

<sup>1</sup> Numbered paragraph 1., p. 39 reads, "That the air carrier parties to this investigation shall, within 120 days of the date of service of this order, cancel all tariffs and terminate

It was the intention of the Board that the new tariffs become effective simultaneously with the cancellation of tariffs and termination of practices inconsistent with the Board's opinions. Cancellation and termination are to take place, and new tariffs are to become effective, within 120 days of March 14, 1977, the service date of Order 77-3-61. To remove any ambiguity and to clarify the Board's intention, we are by this order amending paragraph 2 of Order 77-3-61.

Accordingly, it is ordered:

1. That numbered paragraph 2 appearing on page 39 of the Board Order 77-3-61, March 10, 1977, be and hereby is amended to read as follows:

2. That the air carrier parties to this investigation shall, on not less than 60 days' notice, file, post and publish tariffs conforming to the opinions herein and effective within 120 days of the date of service of this order.

2. Copies of this order shall be served upon all parties.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board,

PHYLLIS T. KAYLOR,  
Secretary.

[FR Doc. 77-10440 Filed 4-7-77; 8:45 am]

### CIVIL RIGHTS COMMISSION COLORADO ADVISORY COMMITTEE

#### Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Colorado Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 12 noon on April 23, 1977, Room 1700, Executive Tower, 1405 Curtis Street, Denver, Colorado 80202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to review and approve recommendations for the Committee's report on domestic violence.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 5, 1977.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 77-10446 Filed 4-7-77; 8:45 am]

### NEVADA ADVISORY COMMITTEE Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nevada Advisory Committee (SAC) of the Commission will convene at 9 a.m.

and will end at 12 noon on April 30, 1977, at the Holiday Inn, Center Strip, 3475 Las Vegas Boulevard, South, Las Vegas, Nevada.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, California 90012.

The purpose of this meeting is to discuss program planning of future State Advisory Committee activities.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 5, 1977.

JOHN I. BINKLEY,  
Advisory Committee  
Management Officer.

[FR Doc. 77-10447 Filed 4-7-77; 8:45 am]

### CIVIL SERVICE COMMISSION COMMUNITY SERVICES ADMINISTRATION

#### Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Community Services Administration to fill by noncareer executive assignment in the excepted service on a temporary basis the position of Chief Executive Assistant, Office of the Director.

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

[FR Doc. 77-10150 Filed 4-7-77; 8:45 am]

### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service on a temporary basis a second position of Deputy General Counsel, Office of the General Counsel, Office of the Secretary.

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

[FR Doc. 77-10149 Filed 4-7-77; 8:45 am]

### U.S. INTERNATIONAL TRADE COMMISSION

#### Revocation of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the U.S. International Trade Commission

to fill by noncareer executive assignment in the excepted service the position of Executive Director.

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

[FR Doc. 77-10148 Filed 4-7-77; 8:45 am]

### HEALTH BENEFITS CONTRACTS

#### Solicitation of Comments

#### Correction

In FR Doc. 77-9343 appearing at page 16644 in the issue of Tuesday, March 29, 1977, in the fourth line, second paragraph, first column, page 16645, "facilities that do meet your present definitions" should read "facilities that do not meet your present definitions".

### DEPARTMENT OF COMMERCE

#### Bureau of the Census

#### CENSUS ADVISORY COMMITTEE OF THE AMERICAN ECONOMIC ASSOCIATION

#### Public Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix I (1974)), notice is hereby given that the Census Advisory Committee of the American Economic Association will convene on April 29, 1977, at 9:15 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Economic Association advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning the economic censuses; reviews major aspects of the Bureau's programs, and advises on the role of analysis within the Bureau and the need for providing data in more detail.

The Committee is composed of 15 members of the American Economic Association.

The agenda for the meeting is: (1) Topics of current interest including staff changes and Census Bureau organization, budget program developments, status of the response burden reduction program, outside funding, and status of legislation; (2) income data from Survey of Income and Education vs. Current Population Survey; (3) developing a price index for apartment buildings; (4) revised monthly business surveys—publication of revised historical data; (5) discussion on modifications to the Census Bureau's economic survey and publication programs to better meet the current needs of the economic analyst and deal with the expected problems of the next decade; (6) current status of 1980 census planning; and (7) Committee recommendations.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee



Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Elmer Biles, Special Assistant to the Associate Director for Economic Fields, Bureau of the Census, Room 3061, Federal Building 3, Suitland, Maryland. (Mall address: Washington, D.C. 20233). Telephone (301) 763-7184.

Dated: April 5, 1977.

ROBERT L. HAGAN,  
Acting Director,  
Bureau of the Census.

[FR Doc. 77-10433 Filed 4-7-77; 8:45 am]

**Domestic and International Business Administration**

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

**Decision on Application for Duty-Free Entry of Scientific Article**

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining of this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00031. Applicant: California Department of Food and Agriculture, Laboratory Services, Division of Plant Industry, 1200 N Street, Sacramento, CA 95814. Article: Electron Microscope, Model EM 9S-2 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of plant virus, including purified preparation and infected tissue; mycoplasma infected tissue; phytopathogenic bacteria; and a variety of other plant pathogens and pests including fungi, nematodes, and insects. In addition, tissue from plants treated with a variety of pesticides, or grown under adverse cultural conditions will be studied. The objective of the research to be conducted is the rapid and accurate diagnosis of plant diseases to help protect agriculture in the State of California.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (October 20, 1976).

Reasons: The foreign article is a relatively simple, easy to operate, medium resolution electron microscope designed for confident use by beginning students

with a minimum of detailed programming. The article provides 7 Angstroms point to point resolution, an accelerating voltage of 60 kilovolts (KV), and low distortion magnifications from 140-60,000X (Magnifications of 140 to 1000X are within the normal, light microscopic range). Thus the article covers the range of light and electron microscopy. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated February 25, 1977 that the low distortion, low magnification capabilities available specifically in the optical range at 140X is pertinent to the purposes for which the foreign article is intended to be used. HEW also advises that it knows of no domestic instrument or apparatus which provided the pertinent features of the article at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Special  
Import Programs Division.

[FR Doc. 77-10434 Filed 4-7-77; 8:45 am]

**NASA—HOUSTON**

**Decision on Application for Duty-Free Entry of Scientific Article**

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00014. Applicant: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Houston, TX 77058. Article: Electron Microscope, Model JEM-100C and accessories. Manufacturer: JEOL, Japan. Intended use of article: The article is intended to be used for studies of lunar samples, i.e. meteorites; and volcanic hypervelocity impact and nuclear-chemical explosion produced glassy droplets. Experiments to be conducted will include scanning electron microscope studies of particles for morphology and surface chemistry, scanning transmission electron microscope studies of surfaces of petrographic thin sections that have been ion etched to determine size, shape and composition of breccia fragments, and transmission electron microscope studies of the <20 μm fraction of lunar regolith samples.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent values scientific value to the foreign article, for such purposes as this article is intended to be used was being manufactured in the United States at the time the article was ordered (September 21, 1976).

Reasons: The description of the applicant's research and/or educational purposes establishes the fact that a conventional transmission electron microscope comparable to the foreign article is pertinent to the purposes for which the article is intended to be used. We know of no conventional transmission electron microscope which was being manufactured in the United States at the time the foreign article was ordered. ("Conventional transmission electron microscopes" are not to be confused with "scanning electron microscopes" which were manufactured domestically at the time the article was ordered and are still being manufactured in the United States.)

The Department of Commerce knows of no better instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Special  
Import Programs Division.

[FR Doc. 77-10435 Filed 4-7-77; 8:45 am]

**SANDIA LABORATORIES**

**Decision on Application for Duty-Free Entry of Scientific Article**

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00004. Applicant: Sandia Laboratories, Kirtland AFB, East Albuquerque, New Mexico 87115. Article: Electron Microscope, Model JEM-100C/SEG and Accessories. Manufacturer: JEOL, Japan. Intended use of article: The article is intended to be used to perform high resolution, electron microscopic analyses on a variety of new materials under investigation and development. Examples of these materials are high strength titanium, aluminum, and steel alloys, superalloys, glass-ceramics, simulated radioactive ceramic oxide wastes, and unknown contaminants on

weapon components. Specifically, the high strength alloys and superalloys will be analyzed to ascertain their crystalline defect structures and the identity of second phases precipitated during heat treatment in order to establish the relationships between their microstructures and their mechanical properties. The glass-ceramics and simulated ceramic wastes will be investigated to determine the chemistry, lattice structure, and distribution of the various phases in their complex microstructures in order to establish the distribution of their chemical components. The unknown contaminants will be analyzed both chemically and structurally to ascertain and correct the sources of component contamination.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (July 7, 1976).

Reasons: The foreign article is equipped with a eucentric side entry goniometer stage with  $\pm 60$  degree tilt and a guaranteed resolution of 7 Angstroms point to point. The National Bureau of Standards advises in its memorandum dated March 1, 1977 that (1) the capabilities of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purposes which was available at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Special Import  
Programs Division.

[FR Doc. 77-10436 Filed 4-7-77; 8:45 am]

**UNIVERSITY OF WISCONSIN-MADISON**  
**Decision on Application for Duty-Free**  
**Entry of Scientific Article**

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00424. Applicant: University of Wisconsin-Madison, Purchasing Department, 750 University Avenue, Madison, WI 53706. Article: 3-Component Flux-gate magnetometer, Model FM 100B. Manufacturer: EDA Electronics Ltd., Canada. Intended use of article: The article is intended to be used

for studies of fluctuations in the Earth's magnetic field in the frequency range of 0-1 Hz to determine the geological structure of the Earth to a depth of about 100 km.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a sensitivity of one gamma or better, portability and battery power operation. The National Bureau of Standards advises in its memorandum dated March 10, 1977 that (1) the features of the article described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Special Import  
Programs Division.

[FR Doc. 77-10437 Filed 4-7-77; 8:45 am]

**UNIVERSITY OF MINNESOTA, ET AL.**

**Applications for Duty-Free Entry of**  
**Scientific Articles**

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651); 80 Stat. 897. Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before April 28, 1977.

Amended regulations issued under cited Act, (15 CFR 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00158. Applicant: University of Minnesota, Minneapolis, Minnesota 55455. Article: Electron Microscope, Model JEM-100C/SEG, Haskris Water Recirculator and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used for the following research purposes: BF-DF studies of phase distribution in metal alloys; lattice imaging high resolution defect studies of metal alloys; X-ray microanalysis of phases in minerals, metals, frozen microemulsion, frozen biological tissues for spatial distribution

maps of elements ( $Z > 11$ ); crystal structure determination of fine second phases using micro diffraction; secondary electron imaging of fracture surfaces and catalytically poisoned surfaces; low dose STEM imaging of radiation sensitive polymer crystal and spherulites. The article will also be used in the courses Mat Sci 8520 Electron Microscopy and Diffraction and Mat Sci 8521 Electron Microscopy Laboratory in which students will be familiarized with techniques of use and interpretation in electron microscopy and the range of applications for transmission, scanning and scanning transmission electron microscopy and electron diffraction. Application received by Commissioner of Customs: March 17, 1977.

Docket Number: 77-00159. Applicant: Northeastern University, Department of Chemistry, 360 Huntington Avenue, Boston, Massachusetts 02115. Article: High Resolution Fourier Transformation Multi-Nuclear Magnetic Resonance Spectrometer, Model JNM/FX60Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used in the following research projects which involve the determination of nmr spectra of hydrogen, carbon-13, and fluorine nuclei:

- Inorganic and Bioinorganic Reaction Mechanisms—Solution Kinetics.
  - Separation Methods. Application of NMR to Forensic Chemistry and Drug Analysis.
  - Structure of Natural Products derived from plants.
  - NMR in Analysis of Drugs of Abuse.
  - Synthesis of Natural Products.
  - Structural and Synthetic Medicinal Chemistry of Aporphines.
  - Structure and Chemistry of Natural Anti-tumor Agents.
  - Study of Electronic Structure of Transition Metal Systems. Measurements of Magnetic Exchange Using Knight Shifts. Magnetic and Structural Properties of Transition Metal Complexes Containing fluorine.
  - Thermal Rearrangements of Organic Molecules.
  - NMR Applied to the study of Pharmaceuticals.
  - Chemistry of Anti-Plague Agents.
    - Mechanism of Reductive Ring-Enlargement from Cyclopropenes to Cyclobutenes.
  - Paterno-Buchi Photovalence Isomerization as a Means for Storing Solar Energy.
  - Binuclear Bridging C,H. Complexes.
  - <sup>13</sup>C Labelling Studies in the Investigation of Hydrocarbon Pyrolysis Mechanisms.
  - Intermolecular Interactions in Clathrate Complexes.
  - Biochemical Structure Investigations.
  - Structural Determination of Organic Radiation-Chemical Products.
  - Solution Magnetic Susceptibility Studies using the Evans NMR Method.
  - Fluxionality - Stereochemical non-rigidity as a function of temperature.
- The article will also be used in the course "Identification of Organic Compounds" (Chem. 12.253) to teach the ap-

plication of various analytical techniques in determination of molecular structure and identification of unknown organic compounds. Application received by Commissioner of Customs: March 17, 1977.

Docket Number: 77-00160. Applicant: Langston University, P.O. Box 967, Langston, Oklahoma 73050. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for sectioning plant, animal, and fungal tissues which have been embedded in hardened epoxy resins. Investigations will include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fugal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments.

(Catalog of Federal Domestic Assistance Programs No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,  
Director, Special Import  
Programs Division.

[FR Doc. 77-10438 Filed 4-7-77; 8:45 am]

## COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### PROCUREMENT LIST 1977

#### Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List. SUMMARY: This action adds to Procurement List 1977 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 8, 1977

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 22, 1976 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (41 FR 46641) of proposed additions to Procurement List 1977, November 18, 1976 (41 FR 50975).

After consideration of all the relevant data presented, the Committee has determined that the commodity listed below is suitable for procurement by the Government under 41 U.S.C. 46-48(c). 85 Stat. 77.

Accordingly, the following commodity is hereby added to Procurement List 1977:

Class 8460

Suitcase, Coated Cloth, Nylon, 8460-01-014-1972.

C. W. FLETCHER,  
Executive Director.

[FR Doc. 77-10629 Filed 4-7-77; 8:45 am]

## COUNCIL ON ENVIRONMENTAL QUALITY

### ENVIRONMENTAL IMPACT STATEMENTS March 28 Through April 1, 1977

The following is a list of environmental impact statements received by the Council on Environmental Quality from March 28 through April 1, 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 is forty-five (45) days from this FEDERAL REGISTER notice of availability. (May 23, 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 are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

#### DEPARTMENT OF AGRICULTURE

Contact: Mr. Errett Deck, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359-A, Washington, D.C. 20250, 202-447-6827.

#### FOREST SERVICE

##### Draft

Naked Island Timber Sale, Chugach National Forest, Alaska, March 28: Proposed is a salvage timber sale on Naked Island, Prince William Sound, about 60 miles west of Cordova in Chugach National Forest, Alaska. The sale, approximately 100 acres in size, will consist of logging several clear cut units ranging in size between approximately 12 to 36 acres of insect damaged timber. The roadless and undeveloped character of the area will be lost and the sale will have a visual impact on the landscape over the next 30-40 years. (ELR Order No. 70393.)

Holly Springs and Tombigbee National Forest Timber Plan, several counties in Mississippi, March 29: The proposed action is the implementation of a new 10-year Timber Management Plan for Holly Springs and Tombigbee National Forests, effective October 1, 1977. The plan calls for even-aged forest management for that part of the forests which is suitable for sustained yield timber production and not reserved for some other use. Adverse environmental effects include a temporary decrease in the quality of forest scenery from timber cutting, other silvicultural treatments, and road construction; soil erosion and increases in stream turbidity; and shifts in wildlife populations. (ELR Order No. 70399.)

##### Final

Big Game Habitat Improvement, Northern Idaho, April 1: Proposed is the prescribed

burning of brushfields in northern Idaho from the present to the completion of land management planning. The purpose of the habitat improvement program is to maintain the brushfield state of plant succession to provide forage for big game species, primarily elk, at a level nearer the productive capabilities of the land. The proposed project areas are located in the Clearwater, Idaho Panhandle, and Nezperce National Forests. This program will alter the environment by maintaining selected areas in the brushfield stage of plant succession. Comments made by: AHP, DOI, COE, EPA, FPC, State agencies, concerned citizens. (ELR Order No. 70423.)

Allegheny National Forest, Off-Road Vehicles, several counties in Pennsylvania, March 29: Proposed is the management of off-road vehicle (ORV) use in Allegheny National Forest, Pennsylvania, in a manner that will protect Forest resources, promote safety of its users and minimize conflicts among the use of those lands. To accomplish this objective, cross-country motorized vehicle use will be confined to designated ORV trails within certain portions of the Forest and such use will be exclusively by motorcycles (trailbikes) and registered snowmobiles. Environmental effects are considered to be generally favorable. Comments made by: DOI, DOD, EPA, State and local agencies, concerned citizens. (ELR Order No. 70396.)

#### DEPARTMENT OF DEFENSE

#### U.S. AIR FORCE

Contact: Col. Luis F. Dominguez, Room 5D 431, Pentagon, Washington, D.C. 20330.

##### Final

TFWC Range Complex, Nellis AFB, Nev., April 1: A draft EIS was submitted to CEQ in June 1974 concerning the Continental Operations Range (COR), a proposal which was subsequently cancelled. However, proposed air space changes and additional radar sites peculiar to the Tactical Fighter Weapons Center Range (TRC) are still required. The environmental impacts associated with the proposals for the TRC in the COR draft EIS remain valid and have been carried forward in this final EIS. Proposed is the redefinition and designation of certain restricted areas, the establishment of 2 special rule areas, and the construction of roads and instrument trailer pads for additional ground based mobile electromagnetic radiators. Comments made by: USDA, HEW, DOI, DOT, EPA, State and local agencies, concerned citizens. (ELR Order No. 70312.)

#### U.S. ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, SW., Washington, D.C. 20314, 202-693-6795.

##### Draft

Mississippi River, Ste. Genevieve, St. Mary's, Mo. March 29: Proposed is a flood protection plan for the Mississippi River between Ste. Genevieve and St. Mary's, Missouri. The plan consists of an 8-foot landside levee raise for the 14.8 miles of levee protecting 9,069 acres of agricultural land and the village of Pujol and Kaskaskia, Illinois on Kaskaskia Island. Protection from flooding from the Mississippi River will be increased to 46.6 feet on the Chester, Illinois, or a flood with the probability of occurrence of once in approximately 50 years. (ELR Order No. 70397.)

Little Wood River Flood Damage Reduction (2), Lincoln County, Idaho, April 1:

Proposed is a flood damage reduction project which would improve the existing system for diverting floodwater from the Little Wood River into nearby lava fields. The two proposed diversion projects would be located near Shoshone and Dietrich in Lincoln County, Idaho, and would reduce present flood damage potential by 86 percent. The Dietrich Canal diversion would increase the existing diversion capacity from 500 to 1,500 cubic feet per second. The Milner-Gooding Canal diversion would permit the diversion of an additional 600 cfs into adjacent lava fields. Flood protection for 2,560 acres would be provided. (Walla Walla District.) (ELR Order No. 70424.)

Beadle Bay Development, Saginaw Bay, Huron County, Mich., April 1: Proposed is the issuance of a permit for the construction of boat channels in Saginaw Bay, Lake Huron, Michigan. The project requires dredging a combined total of 2600 cubic yards of material to make connections in two locations on the existing channel off Wild Fowl Bay. Excavation of the connection will result in turbidity in the water, and additional travel by vehicles to the areas and through the waterways by boats will cause increased congestion, noise, and exhaust emissions. (Detroit District.) (ELR Order No. 70426.)

Parker Lake, Muddy Boggy Creek (2), Coal County, Okla., March 29: Proposed is the construction and operation of the Parker Lake flood control project at mile 127.4 on Muddy Boggy Creek in Oklahoma. The project consists of a rolled earthfill embankment, a grated conduit, a limited service spillway, access roads, and project buildings. The Lake will reduce annual flood damages, increase water supply, and provide opportunities for recreation. Adverse impacts include permanent inundation of 8 archeological sites, relocation of 7 families, and destruction of wildlife on 6,110 acres of land. (Tulsa District.) (ELR Order No. 70403.)

#### Final

Swift Creek Basin, Edgecombe and Nash Counties, N.C., March 29: The Project involves the construction of a flood control project on Swift Creek located in Edgecombe and Nash Counties. The project consists of about 28 miles of stream snagging and clearing on Swift Creek and about 1.7 miles of channel excavation on the White Oak Swamp tributary. Adverse impacts are the loss of fishery and wildlife resources in portions of Swift Creek and White Oak Swamp. (Wilmington District.) Comments made by: DOC, HEW, DOI, AHP, EPA, USDA, State and local agencies, concerned citizens. (ELR Order No. 70404.)

Denison Dam, Lake Texoma, Red River O & M, Oklahoma and Texas, March 29: Proposed is the operation and maintenance of Denison Dam, Lake Texoma, Texas. The project consists of reservoir regulation; flood control; management of land resources and facilities; and management of leases, easements and other outgrants. Adverse impacts include soil erosion and/or compaction (due to recreational use, traffic, and wave action and pool fluctuation); damage to and loss of vegetation (due to pool fluctuation and construction); and alterations of the natural environment through recreational development and construction. Comments made by: FPC, EPA, DOI, DOT, USDA, AHP, HEW. (ELR Order No. 70412.)

Bardwell, Benbrook, Grapevine and Navarro Mills Lake, several counties in Texas, March 29: This statement reviews the environmental impacts of the operations, maintenance, and management programs at four completed and operating reservoir projects in the Trinity River Basin, Texas. These programs include flood control, water conservation, operation, and maintenance of

project structures and recreational facilities, and management of lands and waters for fishing, boating, swimming, hunting, and other forms of recreation. Project implementation would place pressure on project lands by heavy recreational use increasing sanitation problems, refuse removal, and resource protection problems. (Fort Worth District.) Comments made by: EPA, USDA, DOC, HEW, DOI, DOT, AHP. (ELR Order No. 70411.)

#### NAVY

Contact: Mr. Ed Johnson, Department of the Navy, Room 4B466, Pentagon, Washington, D.C. 20350, 202-697-3639.

#### Supplement

USUHS Interim Wastewater Treatment, Bethesda (8-1), Montgomery County, Md., March 28: The statement supplements a final EIS filed with CEQ in January 1975. The purpose of the addendum is to update the status of the regional sewer situation and to assess the environmental effects of a proposed interim wastewater treatment facility at the National Naval Medical Center site. Construction of the facility will result in removal of existing vegetation, increases in erosion and releases of nutrients, and changes in water quality in Stoney Creek. (ELR Order No. 70392.)

#### ENVIRONMENTAL PROTECTION AGENCY

Contact: Please refer to the separate notice published by EPA in this issue of the FEDERAL REGISTER for the appropriate EPA contact:

#### Draft

Tunnel Components, Lower Des Plaines TARP, Cook County, Ill., April 1: This statement relates to the tunnel component of the Tunnel and Reservoir Plan, Lower Des Plaines Tunnel System, proposed by the Metropolitan Sanitary District of Greater Chicago. The proposed action identified and defined for this EIS is the Phase I conveyance tunnel systems and their associated subsystems only. The following information is included in the statement: alternative plans, plan selector, TARP Tunnel Systems, TARP Subsystems, Des Plaines Tunnel Segments and Branches, cost of Tunnel System and Subsystems, and TARP financing. (Region 5.) (ELR Order No. 70429.)

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

#### Final

Clovis Heights/Cougar Estates No. 10-13 Development, Fresno County, Calif., March 29: Proposed is the ultimate development of a primarily vacant parcel of land into a 135-acre residential subdivision of slightly over 500 dwelling units to be designated "Clovis Heights." The first phase of 35 acres is to contain 136 units. Also proposed is the development of a second primarily vacant parcel into a residential subdivision of slightly over 500 dwelling units in four phases. This development is designated "Cougar Estates" No. 10-13; the first phase of 35.4 acres is already being developed into 147 units. Conversion of vacant grazing and farming land to urbanized residential development will result. Comments made by: DOD, COE, USDA, AHP, HEW, State and local agencies, concerned citizens. (ELR Order No. 70407.)

Loring 100 Apts., Loring Park Development District, Hennepin County, Minn., April 1: This statement concerns a mortgage insurance application for the Loring 100 Apart-

ment in Minneapolis, Minnesota. The 102-unit project will provide housing and a community/recreation facility for elderly persons. The Loring 100 project is part of the Loring Park Development, a 2000-unit planned urban redevelopment project. Major adverse impacts include the demolition of existing business and residential structures with attendant displacement of the indigenous population. The erection of tall and massive structures may result in shadow and wind effects. Comments made by: EPA, DOT, DOI, State and regional agencies, concerned citizens. (ELR Order No. 70428.)

The following are Community Development Block Grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local chief executive. (Copies are not available from HUD.)

#### SECTION 104(h)

#### Draft

Willowbrook, Calif., Willowbrook Development Project, Los Angeles County, Calif., March 29: Proposed is the implementation of the Willowbrook Neighborhood Development Program in Los Angeles, California. The project goals include: improvement of the range and quality of housing, orderly growth and development around the Martin Luther King Memorial Hospital/Drew Medical School complex and provision of recreational, community, educational, and commercial facilities and services to meet community needs. Construction and demolition associated impacts will occur. (ELR Order No. 70409.)

Boise, Idaho, West Boise Avenue Trunk Sewer, Idaho, March 29: Proposed is the development of the West Boise Avenue Relief Trunk Sewer in Boise, Idaho. The project would provide relief to the 18-inch Broadway Avenue line by diverting flow from the two 30-inch trunk sewers through a new 36-inch line down Boise Avenue. The relief sewer would connect with the existing 36-inch sewer line on Boise Avenue at Oakland Street. Adverse effects include increases in noise and dust during construction, and growth-related impacts following completion. (ELR Order No. 70402.)

#### DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 5811, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

#### BUREAU OF RECLAMATION

#### Final

Fruitland Mesa Project, Delta, Montrose, and Gunnison Counties, Colo., March 28: The proposed project involves construction of a 606-surface acre reservoir and a water delivery system in the Gunnison River Basin, Colorado. Water would be stored and distributed for irrigation, fishery, and recreation development. Irrigation water would be provided to 11,940 acres of presently un-irrigated land and 6,310 acres of irrigated land in need of a supplemental supply. Construction is scheduled to be initiated in FY 1977 and will extend over 6 years. Milly K. Goodwin Lake would inundate 806 acres of mountain valley and 4.5 miles of stream. Comments made by: AHP, USDA, DOD, EPA, HEW, HUD, DOI, State and local agencies, concerned citizens. (ELR Order No. 70395.)

#### GEOLOGICAL SURVEY

#### Draft

E. Gillette Mine, Kerr-McGee Corp., Campbell County, Wyo., April 1: Proposed is approval of a surface mining and reclamation plan for East Gillette Mine, Campbell County, Wyoming. The Kerr-McGee Corporation plans include mining of about 340 million

tons of coal at a fuel production rate of about 8 million tons per year through 1992, 12 million tons per year until 2003, and 9.6 million tons per year until 2013. Adverse impacts include the removal of 636.6 million cubic yards of overburden, permanent reshaping of the 2,679-acre mining area, and destruction of shallow aquifers, vegetation, soils, and wildlife habitat. (ELR Order No. 70417.)

#### INTERSTATE COMMERCE COMMISSION

Contact: Mr. Richard I. Chais, Chief, Section of Energy and Environment, Room 3373, 12th and Constitution Ave. NW., Washington, D.C. 20423, 202-275-7692.

#### Final

Norfolk, Neb.-Winner, S. Dak. rail abandonment, Nebraska and South Dakota, March 31: Proposed is the abandonment and complete dismantling of the Chicago and North Western Transportation Co.'s Winner Branch between Norfolk, Nebraska and Winner, South Dakota, a distance of approximately 172.4 miles. Authorization of the abandonment would result in the elimination of direct rail service to 22 agrarian communities in the Midwest. Freight hauled by the line consists of predominantly grain, fertilizers, and other agrarian products which would be diverted to motor carrier transportation and hauled over the area's highway network. Loss of rail service would disadvantage potential rural and community development. Comments made by: FEA, FPC, EPA, USDA, HEW, DOI, DOT, AHP, State agencies, concerned groups. (ELR Order No. 70414.)

#### DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

#### FEDERAL AVIATION ADMINISTRATION

#### Draft

Greenbrier Valley Airport, Greenbrier County, W. Va., March 29: Proposed are improvements to the Greenbrier Valley Airport in Lewisburg, West Virginia. The project includes construction of a runway and parallel taxiway extension, acquisition of 60 acres for an aviation easement for Clear Zone purposes, and relocation of the existing Approach Lighting System. Plans also call for the construction of an additional aircraft parking apron, automobile parking facilities, and pavements to "T" hangers and General Aviation parking. The runway extension will allow a heavier operating payload for the B-737 aircraft, resulting in increased noise levels. (ELR Order No. 70416.)

#### Final

Anchorage International Airport, North-South runway, Alaska, March 29: Proposed is the construction of a new North-South runway at Anchorage International Airport, Alaska. Construction plans also include a parallel taxiway system, runway and taxiway lighting, navigational aids, service roads, a storm drain system, and security fencing. Adverse effects include loss of relatively undisturbed habitat due to clearing, grading, and gravel extraction necessitated by runway and ancillary construction. Comments made by: EPA, DOC, USA, HUD, DOI, State agencies, concerned groups. (ELR Order No. 70410.)

#### FEDERAL HIGHWAY ADMINISTRATION

#### Draft

Coeur d'Alene-East, Project I-90-1(35)18, Kootenai County, Idaho, April 1: Proposed is the designation of an area north of Coeur d'Alene Lake in Kootenai County, Idaho, as

the location for a new section of Interstate 90. Geographically, the study area is bounded by the City of Coeur d'Alene on the west, Fourth of July Summit on the east, and Coeur d'Alene Lake on the south, and its north boundary extends into National Forest property. Twelve alternatives are currently under consideration, each either overlaying or bypassing the existing section of Temporary I-90 which currently serves the vicinity. A 4(f) statement is included concerning the Mullen Trail. (Region 10.) (ELR Order No. 70419.)

Federal Aid Route 595, Ill. Route 2-I-80, Rock Island and Henry County, Ill., April 1: Proposed is the construction of a segment of Federal Aid Route 595 in Rock Island County, Illinois. The project begins at the intersection of John Deere and Colona Roads and continues 3.5 miles in an easterly direction to the I-80-Cleveland Road interchange. The new facility is planned as a 4-lane expressway with a 22-foot median. Adverse impacts include increased levels of noise and water pollution. (Region 5.) (ELR Order No. 70418.)

U.S. 30, Marshall and Tama Counties, Iowa, March 29: The proposed action is construction of a segment of U.S. 30 in Marshall and Tama Counties, Iowa. The 30-mile project runs from just east of Iowa 330 in Sec. 13-T83N-R19W to the junction of Iowa 212 in Sec. 27-T83N-R14W. Depending on the alternative selected the following impacts will result from construction: displacement of 5-74 houses, mobile homes, and businesses; taking of 640-850 acres for right-of-way; and increased levels of noise pollution. (ELR Order No. 70401.)

Route M, Springfield, Greene County, Mo., April 1: Proposed is the construction of 9.5 miles of limited access highway on new location across the southern limits of the Springfield metropolitan area. The four-lane freeway with a 60-foot wide median, interchanges, and separations will extend from Route 60-13 near the town of Brookline east to the existing interchange of routes 60 and 65 located in the southeast corner of the city. It will parallel the existing Route M on Republic Street and serve as another link in the Springfield freeway and thoroughfare system. Approximately 300 acres of pastureland will be taken from farm production. (Region 7.) (ELR Order No. 70420.)

N.J. Route 23, I-80 to New Street, Passaic County, N.J., March 29: Proposed is the improvement of a 1.65 mile section of New Jersey Rte. 23 in Wayne Township, New Jersey. The project begins north of I-80 and terminates in the vicinity of New Street, and will be upgraded by widening the roadway to six lanes. Construction of the realignment will displace 13 businesses, 32 families, one firehouse and one clubhouse. Other adverse effects include increases in air and noise pollution. (Region 1.) (ELR Order No. 70400.)

U.S. 52-N.C. 24-27, Snuggs St., Stanly County, N.C., March 29: Proposed is construction of a connector from U.S. 52 to N.C. 24-27 in Albermarle, North Carolina. The project consists of improvements to the existing Snuggs Street-Salisbury Avenue-Carolina Avenue Corridor from U.S. 52 to N.C. 73 and the construction of a new roadway from N.C. 73 to N.C. 24-27. Negative impacts vary according to the alternative selected. (Region 4.) (ELR Order No. 70406.)

U.S. 30, Scappoose Section, Columbia and Multnomah Counties, Oreg., March 29: The proposed project consists of upgrading the Scappoose section of Lower Columbia River Highway (U.S. 30). Three improvement options are under study: an east side bypass, reconstruction of the existing facility, and a west side bypass. Adverse impacts vary according to the alternative selected. (Region 10.) (ELR Order No. 70398.)

Appalachian Corridor J, Soddy-Daisy to Dunlap, Hamilton, Bledsoe, and Sequatchie Counties, April 1: Proposed is the construction of approximately 19 miles of a section of Appalachian Corridor "J" from Soddy-Daisy to Dunlap, Tennessee. The proposed project extends in a northwesterly direction from a point near FAS 4340 approximately 0.5 mile east of State Route 29 in the city of Soddy-Daisy, to a western terminus at State Route 28 approximately 1.0 mile north of the City of Dunlap. The highway is classified as a Principal Arterial in Tennessee's "1985 State-wide Functional Highway Classification Plan" and will be a four-lane facility with full control of access on new location. (ELR Order No. 70422.)

#### Final

U.S. 95, Cox's Ranch-Goff Bridge, Idaho County, Idaho, April 1: Proposed is the improvement and realignment of U.S. Highway 95 in the vicinity of Riggins, Idaho. The study corridor area begins at Cox's Ranch south of Riggins, passes through Riggins, and ends at Goff Bridge north of Riggins. Project length is approximately seven miles. Adverse effects include the commitment of up to 140 acres of land, and the displacement of up to four residences. Comments made by: HUD, COE, USDA, EPA, state and local agencies, concerned citizens. (ELR Order No. 70427.)

Flamingo Road, I-15 to U.S. 93-95, Clark County, Nev., March 31: Proposed is the Flamingo Road project, which consists of upgrading an existing arterial roadway in the Las Vegas metropolitan area south of the present limits of the City of Las Vegas. The western terminus of the project is I-15, and the eastern terminus is U.S. 93-95 (Boulder Highway). Total project length is 6 miles, with part of the roadway divided into four lanes and the remainder into 6 lanes. Adverse impacts include 8 residential and 3 business relocations, damage to several commercial properties, and increased noise levels in the area. Comments made by: COE, HEW, HUD, DOI, EPA, county and local agencies, concerned citizens. (ELR Order No. 70415.)

#### Supplement

U.S. 30, Benton and Linn Counties (S-1), Iowa, Mar. 29: This statement supplements a final EIS filed with CEQ in July 1972. The proposed project is the improvement of a 16-mile segment of U.S. 30 in Iowa, beginning at U.S. 218 in Benton County and terminating at Iowa 149 in Linn County. The supplement contains a new concept in regard to alternatives which reflects an attempt to minimize the conversion of prime agricultural land to highway right-of-way. A modified access design is considered, which utilizes much of the existing facility and would be constructed in two phases. (Region 7.) (ELR Order No. 70408.)

M-66 relocation, Phelps Rd.-Smithville (S-1), Missaukee and Kalkaska Counties, Mich., April 1: Proposed is the relocation of State Trunkline M-66 from Phelps Road north approximately 5.9 miles to 2900 feet north of Smithville, Michigan. The major design features of this project consist of a two-lane free access roadway having a 24-foot pavement and 10-foot paved shoulders within a 150-foot right-of-way. A new bridge structure crossing the Manistee River will be located approximately 400 feet east of the existing bridge which will be removed. Adverse effects include the acquisition of approximately 107 acres, 90 percent of which is wooded. (Region 5.) (ELR Order No. 70425.)

T.H. 23, Junction C.S.A.H. 24-Junction T.H. 212 (S-2), several Counties in Minnesota, March 29: This statement supplements a final EIS filed with CEQ in 1972. The proposed action is the improvement of a 33 mile segment of Minnesota State Highway 23 from Cottonwood to Clara City. Although the

FES did not anticipate any channel change alignment, the supplement reflects the results of more detailed hydraulic studies which indicate such changes are necessary on four crossings of Hazel Creek and the Yellow Medicine River. The Yellow Medicine River channel change will isolate 1-2 acres of flood plain cropland without access. (Regions.) (ELR Order No. 70405.)

Canandaigua South West Bypass, N.Y. Route 5 and 20 (S-1), Ontario County, N.Y. April 1: Proposed is the construction, on new location, of a 2.2-mile highway which would bypass the central business district of the City of Canandaigua, New York. The highway would begin on West Avenue (Route 5/20), 0.6 mile west of the city line in the Town of Canandaigua, pass through the southwestern portion of the city and terminate at the intersection of South Main Street and Eastern Boulevard (Route 5/20) within the city. Two 12-foot travel lanes will be provided. A limited number of families and businesses will be relocated. (Region 1.) (ELR Order No. 70421.)

#### URBAN MASS TRANSPORTATION ADMINISTRATION

##### Draft

North Transit Operating Base, Seattle, King County, Wash., March 30: The proposed action is to build a transit operating base in the North Seattle/King County area in Washington. The base would be located in the area bounded by King County on the north, Lake Washington Ship Canal on the south, Lake Washington on the east and Puget Sound on the west. Two other transit operating bases have been constructed outside the Seattle central business district. Adverse impacts include taking of 15 acres, slight increase in air pollution, and relocation of businesses. (ELR Order No. 70413.)

#### VETERANS ADMINISTRATION

Contact: For Housing Programs, Mr. Lyman T. Miller, Assistant Director for Construction and Valuation, Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, 202-389-2691. For all other programs, Mr. Nicholas Clark, Civil Engineer, Technical Services Division, Engineering Service, Veterans Administration, Washington, D.C. 20420, 202-389-2086.

##### Draft

New York National Cemetery, Long Island, N.Y., March 28: The proposed action is construction of a 900 acre National Cemetery to be located on Long Island near Calverton, N.Y. The proposed development will include but not be limited to: space for 500,000 interments, an administration building, a memorial center, a committal service center, a maintenance complex and other associated cemetery functions. The action will result in loss of farmland, woodland, and wildlife habitat; increased traffic volume; and construction-associated impacts. (ELR Order No. 70394.)

NICHOLAS C. YOST,  
General Counsel.

[FR Doc.77-10469 Filed 4-7-77; 8:45 am]

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### SEAFARER ELF COMMUNICATIONS SYSTEM SITE SELECTION AND PROPOSED TEST OPERATIONS IN MICHIGAN

##### Public Hearing and Availability of Draft Environmental Impact Statement

Notice is hereby given that a public hearing will be held for the purpose of providing the public with relevant information on site selection and proposed

test operations at K. I. Sawyer Air Force Base, Michigan, for the Seafarer Extremely Low Frequency (ELF) Communications System, and to afford the public an opportunity to present their views on the proposed Navy project. The hearing will be held on April 25, 1977, and continued on April 26 if necessary, at the Ramada Inn, 412 West Washington, Marquette, Michigan. The hearing will commence at 7 p.m. and terminate at 11 p.m. The hearing will be conducted by Captain John Dobson, U.S. Navy (CEC), and will include a presentation explaining the Navy's proposed action, a system description, a site-dependent environmental impact summary, alternatives, proposed Navy recommendations and the proposed program plan for the future.

This hearing is being held in Marquette, Michigan, because K. I. Sawyer Air Force Base and the surrounding region is one of three candidate areas considered for building a Seafarer Test Facility, conducting ELF communications experiments, and developing appropriate construction criteria and operational methods to ensure maximum environmental protection in the event the Michigan area is approved at some future time for an operational Seafarer System.

Seafarer is essentially a buried transmitting array of insulated cables. The system's principal purpose is for communications with submerged submarines.

The following procedures will be followed during the public hearing. Individual speakers will have three minutes, and group spokespersons will have five minutes to summarize and present their views. One speaker may not relinquish time to another. Individuals or organizations wishing lengthy statements to be included in the hearing record should provide written statements to the Hearing Officer. Preregistration is desired, and should be made in person or by writing either to the Seafarer Information Office, 221 Rublein Street, Marquette, MI 49855 or to Captain John Dobson, USN (CEC), Code 01F, Naval Electronic Systems Command, Washington, D.C. 20360. The name and title of the speaker for organizations should be included. The closing date for including written statements in the hearing record is May 25, 1977.

Anticipated environmental effects are available for review in the Seafarer ELF Communications System Draft Environmental Impact Statement for Site Selection and Test Operations; Naval Electronic Systems Command (February 1977). Copies of the statement are available at the following locations:

Chief of Information, The Pentagon Press Room, Washington, D.C. (Captain Thomas, 679-2635).  
Bay de Noc Community College Library, North Campus, Escanaba, MI 49829.  
State of Michigan, Washington Office, 1150 17th Street NW., Suite 609, Washington, D.C. 20036.  
Library of Congress, Washington, D.C. 20540.  
U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL 60604.  
Commander, K.I. Sawyer Air Force Base, MI 49843.

Michigan Environmental Review Board, Lewis Cars Building, Lansing, MI 48909.  
Northern Michigan University Library, Marquette, MI 49855.  
Michigan Technological University Library, Houghton, MI 49931.  
Lake Superior State College Library, College Drive, Sault Ste. Marie, MI 49783.  
Suomi College Library, Hancock, MI 49930.  
Chassel Township Schools, P.O. Box 40, Chassel, MI 49916.  
Big Bay de Noc School, Cooks, MI 49817.  
Gogetic Community College Library, Greenbush and Jackson Road, Ironwood, MI 49938.  
Amasa Community Library, Amasa, MI 49903.  
Baraga Township Schools, Lyons Street, Baraga, MI 49908.  
Bergland Community School, Bergland, MI 49910.  
Bessemer Public Library, City Hall S. Sophie Street, Bessemer, MI 49911.  
Bessemer Township Schools, Ramsey, MI 49951.  
A. D. Johnson High School, Moore Street, Bessemer, MI 49911.  
Brimley Public Schools, Brimley, MI 49715.  
Calumet School—Public Library, Calumet Avenue, Calumet, MI 49913.  
Carney—Nadeau Public School, Carney, MI 49812.  
Les Cheneaux Community Schools, Cedarville, MI 49719.  
Champion High School, P.O. Box, Champion, MI 49814.  
Ewen-Trout Creek Consolidated School, Box 218, Ewen, MI 49925.  
Gladstone Area School and Public Library, 1041 Dakota Avenue, Gladstone, MI 49837.  
Crystal Falls Community Library, Superior Avenue, Crystall Falls, MI 49920.  
Forest Park School District, West Superior Avenue, Crystal Falls, MI 49920.  
Curtis Library, Curtis, MI 49820.  
DeTour Area School and Public Library, P.O. Box 68, DeTour, MI 49725.  
Osceola Township School and Public Library, Box 371, Dollar Bay, MI 49822.  
Rock River Township Schools, Eben Junction, MI 49825.  
Escanaba Public Library, 201 South 7th Street, Escanaba, MI 49820.  
Catherine Bonifas Memorial Library, Escanaba Area Public High School, 500 South Lincoln Road, Escanaba, MI 49829.  
Escanaba Area Junior High School, 1500 Ludington Street, Escanaba, MI 49829.  
McMillan Township Library, Ewen, MI 49925.  
North Dickinson County School, Star Route 1, Iron Mountain, MI 49801.  
West Iron District Library, City Hall, 106 West Genesee, Iron River, MI 49935.  
Burt Township School and Public Library, Grand Marais, MI 49839.  
Forsyth Township Public Library, Gwinn, MI 49841.  
Gwinn High School Library, Gwinn High School, Gwinn, MI 49841.  
Hancock School—Public Library, Quincy Street, Hancock, MI 49930.  
Bark River—Harris Schools, Harris, MI 49345.  
Portage Lake District Library, 105 Huron Street, Houghton, MI 49931.  
Houghton High School Library, Houghton High School, Houghton, MI 49931.  
Mid-Peninsula Library Federation, Dickinson County Library, 401 Iron Mountain Street, Iron Mountain, MI 49801.  
Iron Mountain Senior High School, West B Street, Iron Mountain, MI 49801.  
Central Junior High School, Iron Mountain, MI 49801.  
Lake Linden—Hubbell Public Schools, 601 Calumet Street, Lake Linden, MI 49945.  
L'Anse Township School and Public Library, L'Anse, MI 49946.  
Mackinac Island Public Library, Mackinac Island, MI 49757.

West Iron County High School, 612 W. Adams Street, Iron River, MI 49935.  
 Carnegie Library, 235 E. Auror Street, Ironwood, MI 49938.  
 Luther L. Wright High School Library, Ayer Street, Ironwood, MI 49938.  
 Ironwood Catholic High School, 106 S. Marquette Street, Ironwood, MI 49938.  
 Carnegie Public Library, Corner Main and Barnum Streets, Ishpeming, MI 49849.  
 Ishpeming High School Library, Division Street, Ishpeming, MI 49859.  
 C. L. Phelps Intermediate School, North Street, Ishpeming, MI 49849.  
 Kingsford High School, Hamilton Avenue, Kingsford, MI 49801.  
 Kingsford Junior High School, Hamilton Avenue, Kingsford, MI 49801.  
 Menominee Middle School, 13th Street at 13th Avenue, Menominee, MI 49858.  
 Allouez Township School Public Library, P.O. Box 318, Mohawk, MI 49950.  
 Munising School—Public Library, Mather High School, Elm Avenue, Munising, MI 49862.  
 Manistique School and Public Library, Corner Main and Cedar Street, Manistique, MI 49854.  
 Roosevelt School, Box 88, Marenisco, MI 49947.  
 Peter White Public Library, Marquette, MI 49855.  
 Marquette Senior High School, 1201 West Fair Avenue, Marquette, MI 49855.  
 Bothwell Middle School, Marquette, MI 49855.  
 St. Peter—St. John, 500 S. Fourth Street, Marquette, MI 49855.  
 Spies Public Library, 940 First Street, Menominee, MI 49858.  
 Menominee Area High School, 18th Street, Menominee, MI 49858.  
 Rapid River Public Schools, Rapid River High School, Rapid River, MI 49878.  
 Republic—Michigan School and Public Library, Route 1, Republic, MI 49879.  
 Rock Public Schools, Rock, MI 49883.  
 Rudyard School—Public Library, Second and William Streets, Rudyard, MI 49780.  
 Turner—Howson Elementary School Library, Rudyard, MI 49780.  
 National Mine High School, Box B, National Mine, MI 49865.  
 Negaunee Public Library, Case Street, Negaunee, MI 49866.  
 Negaunee High School, Peck Street, Negaunee, MI 49866.  
 Tahquamenon Area School, Public Library, Newberry High School, Newberry, MI 49863.  
 Norway Public Library, Norway, MI 49870.  
 Norway High School Library, 3rd and Section Streets, Norway, MI 49370.  
 West Iron County Middle School, Airport Road, Stambaugh, MI 49964.  
 Menominee County Library, Stephenson, MI 49887.  
 Wakefield Public Library, 407 Hancock Street, Wakefield, MI 49958.  
 St. Ignace Public Library, 396 North State Street, St. Ignace, MI 49781.  
 LaSalle High School, Portage Road, St. Ignace, MI 49781.  
 Eastern Peninsula Library System Stations, c/o Carnegie Public Library, Sault Ste. Marie, MI 49783.  
 Sault Area High School, 1 Educational Plaza, Sault Ste. Marie, MI 49783.  
 Sault Junior High School, E. Spruce, Sault Ste. Marie, MI 49783.  
 Wakefield Township Schools, Wakefield, MI 49963.  
 Watersmeet High School, Watersmeet, MI 49969.  
 Caro Lake Township Library, White Pine, MI 49971.

For further information contact Captain John Dobson, USN (CEC); Naval

Electronic Systems Command, Code 01F, Washington, D.C. 20360; telephone number 202-692-5958.

Dated: April 5, 1977.

K. D. LAWRENCE,  
 Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc.77-10464 Filed 4-7-77;8:45 am]

Office of the Secretary  
 DEPARTMENT OF DEFENSE 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, June 7, 1977; Tuesday, June 14, 1977; Tuesday, June 21, 1977; and Tuesday, June 28, 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. (c) (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. (c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the 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. 552b.(c) (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. 552b.(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 3D282, The Pentagon, Washington, D.C.

MAURICE W. ROCHE,  
 Director, Correspondence and Directives OASD (Comptroller).

APRIL 5, 1977.

[FR Doc.77-10442 Filed 4-7-77;8:45 am]

ENVIRONMENTAL PROTECTION  
 AGENCY

LOWER DES PLAINES TUNNEL SYSTEM  
 [FRL 712-3]

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the Lower Des Plaines Tunnel System, Reservoir Plan Proposed by the Metropolitan Sanitary District of Great Chicago, Illinois.

The proposed action is the Phase I conveyance tunnel systems and their associated subsystems only. The planned storage reservoirs, waste treatment plant upgrading and expansion, on-line reservoirs, and instream aeration facilities were not included.

This DEIS was transmitted to the Council on Environmental Quality (CEQ) on April 1, 1977. In accordance with CEQ's notice of availability, comments are due on May 23, 1977.

Copies of the DEIS are available for review and comment from: Environmental Protection Agency, Region 5, Planning Branch, EIS Preparation section, 230 South Dearborn Street, Chicago, Illinois 60604 or by telephoning the TARP project officer at 312-353-2157.

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Region 5 Library, 230 South Dearborn Street, Chicago, Illinois 60604.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

Information copies of the DEIS are available at cost (10 cents/page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, DC 20036. Please reference ELR No. 70429.

Copies of the DEIS have been sent to various Federal, State and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: April 5, 1977.

PETER L. COOK,  
 Acting Director,  
 Office of Federal Activities.

[FR Doc.77-10481 Filed 4-7-77;8:45 am]

[Report No. 1035]

**FEDERAL COMMUNICATIONS COMMISSION**  
**ACTIONS IN RULE MAKING PROCEEDINGS FILED**  
**Petitions for Reconsideration**

APRIL 4, 1977.

Docket or RM No.	Rule No.	Subject	Date received															
RM-2756.....	Sec. 73.202(b)....	Request amendment FM table of assignments as follows:																
		<table border="1"> <thead> <tr> <th>City</th> <th>Delete</th> <th>Add</th> </tr> </thead> <tbody> <tr> <td>Portageville, Miss.....</td> <td>22A</td> <td>24A</td> </tr> <tr> <td>Dexter, Miss.....</td> <td>27A</td> <td>29A</td> </tr> <tr> <td>Caruthersville, Miss....</td> <td>27A</td> <td>28A</td> </tr> <tr> <td>Malden, Miss.....</td> <td>22A</td> <td></td> </tr> </tbody> </table>	City	Delete	Add	Portageville, Miss.....	22A	24A	Dexter, Miss.....	27A	29A	Caruthersville, Miss....	27A	28A	Malden, Miss.....	22A		
City	Delete	Add																
Portageville, Miss.....	22A	24A																
Dexter, Miss.....	27A	29A																
Caruthersville, Miss....	27A	28A																
Malden, Miss.....	22A																	
		Filed by Benedict P. Cottone, attorney for Communications Systems, Inc.	Mar. 14, 1977. Supplemented: Mar. 15, 1977.															

NOTE.—Oppositions to petitions for reconsideration must be filed by Apr. 25, 1977. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

FEDERAL COMMUNICATIONS COMMISSION,  
**VINCENT J. MULLINS,**  
*Secretary.*

[FR Doc.77-10332 Filed 4-7-77; 8:45 am]

[Report No. 852]

**COMMON CARRIER SERVICES**  
**INFORMATION**

**Applications Accepted for Filing**

APRIL 4, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See section 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day pre-

ceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's Rules.)

FEDERAL COMMUNICATIONS  
 COMMISSION,  
**VINCENT J. MULLINS,**  
*Secretary.*

APPLICATIONS ACCEPTED FOR FILING  
 DOMESTIC PUBLIC LAND MOBILE RADIO  
 SERVICE

20993-CD-P-11-77 Michigan Bell Telephone Company (KQA767), C.P. to change transmitter operating on 152.57 and 152.83 MHz; and for additional facilities to operate on 152.72, 152.60, 152.69, 454.375, 454.425, 454.475, 454.575, 454.625 and 454.525 MHz to be located at Loc. No. 2: 882 Oakmand Boulevard, Detroit, Michigan; and delete locs. 3, 4, 5, 6, and 7; also delete frequency 152.75 MHz from Loc. No. 1.

20998-CD-P-6-77 Michigan Bell Telephone Company (KQK578), C.P. to replace transmitter and change antenna system operating on 152.81 MHz and for additional facilities to operate on 152.75, 152.54, 454.450, 454.550 and 454.650 MHz to be located at 54 North Mill Street, Pontiac, Michigan.

20997-CD-P-6-77 Michigan Bell Telephone Company (KQK579), C.P. to change antenna system and replace transmitter operating on 152.81 MHz and for additional facilities to operate on 152.54, 152.57, 454.450, 454.550 and 454.650 MHz and relocate facilities to be located on Ash Street, East of Matthews Street, Carleton, Michigan.

20998-CD-P-6-77 Michigan Bell Telephone Company (KQK580), C.P. to replace transmitter and change antenna system operating on 152.51 MHz and for additional facilities to operate on 152.66, 152.78, 454.400, 454.500 and 454.600 MHz and to relocate facilities to be located 4.0 miles West of Plymouth, Michigan.

21032-CD-MP-77 Mobilfone Service, Inc. (KWU486), Modification of C.P. to replace

transmitter, change antenna system and relocate facilities operating on 152.24 MHz to be located at One Shell Plaza, Houston, Texas.

21033-CD-P-2-77 Telegraph-Herald, Inc. (KRS641), C.P. for additional facilities to operate on 2118.4 MHz, repeater, at Loc. No. 1: On Hwy. 35, 1.6 miles North of Illinois-Wisconsin border, Kieler, Wisconsin; and for additional facilities to operate on 2168.4 MHz, control, to be located at a new site described as Loc. No. 2: 346 West 8th Avenue, Dubuque, Iowa.

21034-CD-P-77 Telegraph-Herald, Inc. (KUS239), C.P. for additional facilities to operate on 2168.4, control, to be located at a new site described as Loc. No. 2: 346 West 8th Avenue, Dubuque, Iowa.

21035-CD-P-2-77 Robert W. Beasley dba Blue Mountain Mobile Phone Company (KWT864), C.P. for additional facilities to operate on 152.105 MHz at Loc. No. 1: Schwitzer Basin Peak, 7 miles NW of Sandpoint, Idaho; and relocate facilities operating on 152.12 MHz at Loc. No. 1 to be located at Loc. No. 2: 410 South 4th Street, Sandpoint, Idaho.

21036-CD-P-2-77 Salinas Valley Radiotelephone Company (KMA837), C.P. to replace transmitter, and change antenna system operating on 454.025 and 454.175 MHz at Loc. No. 1: Mt. Toro, 10.3 miles SSE of Salinas, California.

21037-CD-P-2-77 The Chesapeake and Potomac Telephone Company of Virginia (KIC347), C.P. to change antenna system operating on 152.51 and 152.60 MHz and relocate facilities to be located at Loc. No. 3: 132 Plaza Trail, Virginia Beach, Virginia.

21038-CD-P-77 The Chesapeake and Potomac Telephone Company of Virginia (KLP628), C.P. to change antenna system operating on 158.10 MHz located at Loc. No. 4: 132 Plaza Trail, Virginia Beach, Virginia.

21039-CD-P-4-77 General Telephone Company of the NW, Inc. (KON912), C.P. to change antenna system operating on 152.69, 152.78, 454.425 and 454.525 MHz located at 426 Casino Road, Everett, Washington.

21040-CD-P-4-77 DPRS, Inc. t/a Zipcod (KCB890), C.P. for additional facilities to operate on 43.58 MHz to be located at a new site described as Loc. No. 18: 44 Binney Street, Boston, Massachusetts; 35.58 MHz to be located at a new site described as Loc. No. 19: 736 Cambridge Street, Brighton, Massachusetts; 35.58 MHz at a new site described as Loc. No. 20: 171 Harrison Avenue, Boston, Massachusetts; and 35.58 MHz at a new site described as Loc. No. 21: 25 Evergreen Street, Framingham, Massachusetts.

21041-CD-P-2-77 E. F. Mitchell, Jr. dba Douglas Radio (KRM967), C.P. to change antenna system operating on 152.09 MHz and for additional facilities to operate on 454.125 MHz located 2.3 miles West of Douglas, Georgia.

21042-CD-P-77 Radio Telephone Service, Inc. (KRH865), C.P. to replace transmitter, change antenna system and relocate facilities operating on 152.24 MHz to be located at WLEX TV Tower, Russel Cave Road, Lexington, Kentucky.

21043-CD-P-2-77 Advanced Radio Communications Company (KLP495), C.P. to change antenna system operating on 152.15 MHz at Loc. No. 3: Bull Run Mountain, 7.1 miles NNW of Haymarket, Virginia; and for additional facilities to operate on 152.15 MHz to be located at a new site described as Loc. No. 4: 5321 First Street NE., Washington, D.C.

## CORRECTIONS

20563-CD-P-77 Messages by Radio, Inc. (KEA200), Correct PN to read: C.P. for



additional location and additional channel of Station KEA200 to operate on 152.21 MHz in Buchanan, New York. All other particulars to remain the same as reported on PN No. 841 dated January 17, 1977.

20988-CD-MP-2-77 Summit Mobile Radio Co. (KCI304), Correct entry to add: also relocated 459.225 MHz, repeater to new Loc. No. 3. All other particulars to remain the same as reported on PN No. 851 dated March 28, 1977.

## RURAL RADIO SERVICE

60247-CR-P-77 Wyoming Telephone Co., Inc. (new), C.P. for a new rural subscriber station to operate on 157.80 and 157.92 MHz to be located approximately 7.6 miles NE of Pinedale, Wyoming.

60248-CR-P-77 RCA Alaska Communications, Inc. (WQO90), C.P. to replace transmitter, change antenna system and change from rural subscriber to central office to operate on 152.51 and 152.60 MHz located at Village located 60 miles West of Dillingham, Alaska.

60249-CR-P-77 RCA Alaska Communications, Inc. (WQO91), C.P. to replace transmitter, add a transmitter, change antenna system and change frequencies from 157.80, 157.89, 157.95 and 158.07 MHz to 157.77 and 157.86 MHz located at Village located 63.6 miles west of Dillingham, Twin Hills, Alaska.

60250-CR-P-77 The Mountain States Telephone and Telegraph Company (KSV88), C.P. to replace transmitter operating on 459.40 MHz located at 103 North Durbin, Casper, Wyoming.

60251-CR-P-77 McClellanville Telephone Company (new), C.P. for a new central office station to operate on 152.81 MHz to be located on Pinckney Street, 0.4 miles SE of Hwy. U.S. 17-701, Awendaw, South Carolina.

## POINT TO POINT MICROWAVE RADIO SERVICE

1777-CF-P-77 Southwestern Bell Telephone Company (KSW26), 405 North Broadway Ave. Oklahoma City, Oklahoma, Lat. 35°28'16" N., Long. 97°30'53" W. C.P. to add frequency 6197.2H MHz toward Yukon, Oklahoma.

1778-CF-P-77 Same (WKR86), 4.3 miles NNE of Yukon, Oklahoma, Lat. 35°33'54" N., Long. 97°42'58" W. C.P. to add antenna and frequencies 5945.2V, 6034.2H, 10735.0V MHz toward Oklahoma City, Oklahoma.

1779-CF-P-77 Same (KSW28), 2.2 miles SSW of Minco, Oklahoma, Lat. 35°16'36" N., Long. 97°57'32" W. C.P. to add antenna and frequencies 6197.2V MHz toward Yukon, Oklahoma and 6197.2H MHz toward Cement, Oklahoma.

1780-CF-P-77 Same (WAU212), 2.4 miles ESE of Cement, Oklahoma, Lat. 34°55'36" N., Long. 98°06'24" W. C.P. to add antenna and frequencies 5945.2V MHz toward Minco and 6004.5H MHz toward Chickasha, Oklahoma.

1781-CF-P-77 Same (new), 528 Kansas Street Chickasha, Oklahoma, Lat. 35°03'01" N., Long. 97°56'20" W. C.P. for a new station on frequency 6256.5V MHz toward Cement, Oklahoma on azimuth 228.2 degrees.

1786-CF-P-77 Copper Valley Telephone Cooperative, Inc. (new), Glenn Highway mile 188.3 Glennallen, Alaska, Lat. 62°06'32" N., Long. 145°29'13" W. C.P. for a new station on frequency 2178.2H MHz toward Cooper Center, Alaska on azimuth 154.5 degrees.

1787-CF-P-77 Same (new), 2.8 South on Richardson Highway Cooper Center, Alaska, Lat. 61°54'58" N., Long. 145°17'30" W. C.P. for a new station on frequencies 2128.2H MHz toward Glennallen on azimuth 334.5 degrees and 2121.6V MHz toward Edgerton, Alaska, on azimuth 159.5 degrees.

1788-CF-P-77 Same (new), Edgerton 4.45 miles NNE of Tonina, Alaska, Lat. 61°42'48" N., Long. 145°07'55" W. C.P. for a new station on frequency 2127.6V MHz toward Cooper Center, Alaska on azimuth 339.6 degrees.

1817-CF-P-77 New Jersey Bell Telephone Company (WBB307), 490 Prospect Avenue West, Orange, New Jersey, Lat. 40°47'23" N., Long. 74°15'17" W. C.P. to add frequencies 6197.2H, 6315.9H, MHz toward New Brunswick on azimuth 48.1 degrees 6390.0H, 11425H, 11245H, 11485V, MHz toward Puddingstone on azimuth 285.7 degrees and 11285V, 11525H, 11685H, 11445V MHz toward Newark, New Jersey on azimuth 133.6 degrees.

1818-CF-P-77 Same (KYS27), 18 Paterson St. New Brunswick, New Jersey, Lat. 40°29'40" N., Long. 74°26'37" W. C.P. to add frequencies 5974.8H, 6093.5H MHz toward West Orange, New Jersey.

1819-CF-P-77 Same (KEA69), 75 Passaic St. Rochelle Park, New Jersey, Lat. 40°54'49" N., Long. 74°04'36" W. C.P. to add a new point of communication on frequencies 6108.3H, 11015H MHz toward West Orange, New Jersey, on azimuth 228.2 degrees

1939-CF-P-77 Pacific Northwest Bell Telephone Company (KP892), 707 West Lewis St. Pasco, Washington, Lat. 46°13'46" N., Long. 119°05'49" W. C.P. to add frequencies 11325.0V, 11485.0V MHz toward Joe Butte, Washington.

1940-CF-P-77 Same (KOJ93), Joe Butte 7.0 miles South of Kennewick, Washington, Lat. 46°06'13" N., Long. 119°07'43" W. C.P. to add frequencies 10875.0V, 11035.0V MHz toward Pasco, Washington.

1951-CF-P-77 Illinois Consolidated Telephone Company (new), 805 7th Street Charleston, Illinois, Lat. 39°29'26" N., Long. 88°10'24" W. C.P. for a new station on frequency 11445.0V MHz toward Mattoon, Illinois on azimuth 264.7 degrees.

1950-CF-P-77 Same (new), 612 South 12th Mattoon, Illinois, Lat. 39°28'35" N., Long. 88°22'06" W. C.P. for a new station on frequency 10995.0V MHz toward Charleston, Illinois on azimuth 84.6 degrees.

1964-CF-P-77 The Mountain States Telephone and Telegraph Company (KPQ26), 103 West Center Street Cedar City, Utah, Lat. 37°40'38" N., Long. 113°03'47" W. C.P. to add frequencies 6404.8V MHz toward Iron Springs and replace and move antenna 4030H MHz toward Iron Springs, Utah.

1965-CF-P-77 Same (KPQ25), 8 miles WNW of Cedar City, Utah, Lat. 37°43'51" N., Long. 113°12'18" W. C.P. to add frequencies 5162.8H MHz toward Cedar City, to add a new point of communication on 5945.2V MHz toward Blowhard Mt. on azimuth 117.7 degrees and move and replace antenna on 3750.0H MHz toward Cedar City, Utah.

1966-CF-P-77 Same (KPX29), Blowhard Mt. 14 miles SE of Cedar, Utah, Lat. 37°35'20" N., Long. 112°52'01" W. C.P. to add frequencies 6197.2V MHz toward Little Creek and to add a new point of communication on 6197.2H MHz toward Iron Springs, Utah on azimuth 297.9 degrees.

1967-CF-P-77 Same (KXR39), 7.8 miles SE of Hurricane, Utah, Lat. 37°05'47" N., Long. 113°11'11" W. C.P. to add frequencies 5945.2V MHz toward St. George PR1 and from passive reflector to St. George 5945.2H MHz toward Blowhard Mt., Utah.

1968-CF-P-77 Same (KXP40), 104 East Tabernacle Street St. George, Utah, Lat. 37°06'29" N., Long. 113°34'47" W. C.P. to add frequency 6197.2H MHz toward St. George PR1 and from the passive to Little Creek.

1970-CF-P-77 American Telephone and Telegraph Company (KQA26), Kalamazoo Co 336 South Burdick Street, Kalamazoo, Michigan, Lat. 42°17'20" N., Long. 85°

35°01" W. C.P. to add frequencies 3750V, 3910V MHz toward Kalamazoo, Michigan.

1971-CF-P-77 Same (KQD79), 5708 N. 14th Street Kalamazoo, Michigan, Lat. 42°20'40" N., Long. 85°37'41" W. C.P. to add frequencies 3870V MHz toward Kalamazoo Co and 3970V MHz toward Lacey, Michigan.

1972-CF-P-77 American Telephone and Telegraph Company (KQF61), Lacey 11160 North Avenue, Bellevue, Michigan, Lat. 42°29'27" N., Long. 85°11'28" W. C.P. to add frequencies 4010V MHz toward Kalamazoo and 3990H MHz toward Parma, Michigan

1973-CF-P-77 Same (KQF60), 3.0 miles WNW of Parma, Michigan, Lat. 42°16'14" N., Long. 84°39'23" W. C.P. to add frequency 4190H MHz toward Lacey, Michigan.

1976-CF-P-77 Southern Bell Telephone and Telegraph Company (KIK68), 36 NE 2nd Street, Miami, Florida, Lat. 25°46'32" N., Long. 80°11'36" W. C.P. to increase antenna structure height move and replace antenna on frequencies 3930V, 4010V, 4190H MHz toward Miller, Florida.

1977-CF-P-77 Same (KJN26), 2627 Norwich Street, Brunswick, Georgia, Lat. 31°09'55" N., Long. 91°29'53" W. C.P. to change frequencies 6219.5V, 6338.1V to 6241.7H MHz toward Jekyll Island, Georgia.

1978-CF-P-77 Same (KJN28), Captain Wylly Road, Jekyll Island, Georgia, Lat. 31°04'04" N., Long. 81°24'56" W. C.P. to change frequencies 5937.8V, 6056.4V to 6019.3H MHz toward Brunswick, Michigan.

1938-CF-P-77 Andrews Tower Rental, Inc. (new) Vernon, Houston and Canal Streets, Vernon, Texas, Lat. 34°08'28" N., Long. 99°17'17" W. Construction permit for new station—6197.2H and 6256.5H MHz toward Quanah, Texas, on azimuth 296 degrees.

1962-CF-P-77 Mountain Microwave (KZA 62), Manchester, 14 miles SW of Chadron, Nebraska, Lat. 42°38'06" N., Long. 103°05'30" W. Construction permit to add 6005.0V MHz and 6167.6V MHz toward Pine Ridge, South Dakota, via power split, on azimuth 41.0 degrees.

## CORRECTION

1725-CF-P-77 American Telephone and Telegraph Company (KQR42), 2.0 miles NE of Atlas, Michigan corrected receive station name to read Milford, Michigan. All other particular remain as reported on PN 849 dated 3-14-77.

1833-CF-P-77 General Telephone Company of the Northwest, Inc. corrected station name. All other particular remain as reported on PN No. 851 dated 8-28-77.

1834-CF-P-77 General Telephone Company of the Northwest, Inc. corrected station name. All other particular remain as reported on PN No. 851 dated 3-28-77.

## MAJOR AMENDMENTS

4242-CF-P-75 Goeken Communications (formerly known as Carter-Goeken Communications) (WBA739), Chicago, Illinois, Lat. 41°52'44" N., Long. 87°38'10" W. Application amended to increase output power, replace transmitters and change point of communication for 2177.0H MHz to Lake Zurich, Illinois, on azimuth 318.4 degrees.

4243-CF-P-75 Same (WBA740), Application amended to change station location to 3 miles N of Lake Zurich, Illinois, Lat. 42°14'10" N., Long. 88°03'50" W.; increase output power and change point of communication for 2127.0H MHz to Somers, Illinois, on azimuth 13.4 degrees.

4244-CF-P-75 Same (WBA741), Application amended to change station location to 1.5 mile NW of Somers, Wisconsin, Lat. 42°39'03" N., Long. 87°55'50" W.; increase output power and change point of com-

- munication for 2170.0H MHz to Lake Zurich, Illinois on azimuth 193.4 degrees; change 2113.0V MHz to 2170.0V MHz towards Milwaukee on azimuth 3.2 degrees.
- 4245-CF-P-75 Same (WBA742), Application amended to change station location to 305 E Wisconsin Avenue, Milwaukee, Wisconsin, Lat. 43°02'18" N., Long. 87°54'05" W.; increase output power and change 2163.0V to 2113.0V towards a new point of communication at Somers, Wisconsin on azimuth 183.2 degrees.
- 303-CF-P-75 Microwave Transmission Corporation (WPP 96), Monument Peak, 4.5 miles NNE of Milpitas, California, Lat. 37°29'07" N., Long. 121°51'57" W. Application amended to increase output power—11625V MHz toward Bald Ridge, California, on azimuth 164.9 degrees.
- 304-CF-P-75 Microwave Transmission Corporation (WPG 27), Bald Ridge, 5 miles NE of Watsonville, California, Lat. 36°56'00" N., Long. 121°41'31" W. Application amended to increase output power—10735V, 10895V, 10935H, 11095H, 10855H, and 11055H MHz toward Capitola, Watsonville, Monterey, Salinas, Monument Peak, and Escrito, all in California, via power split, on azimuths 274.6, 234.8, 198.8, 173.1, 345.1 and 163.8 degrees, respectively.
- 3095-CF-P-75 Microwave Transmission Corporation (new), Vollmer Peak, 1.1 mile SW of Orinda, California, Lat. 37°52'58" N., Long. 122°13'11" W. Application amended to increase output power—11055H MHz toward Concord, California, on azimuth 74.6 degrees.
- 3997-CF-P-75 Microwave Transmission Corporation (new), 2460 Garden Road, Monterey, California, Lat. 36°35'08" N., Long. 121°51'09" W. Application amended to increase output power—11465H MHz toward Bald Ridge, California, via power split, on azimuth 18.7 degrees.

[FR Doc. 77-10403 Filed 4-7-77; 8:45 am]

[Report No. 851]

### COMMON CARRIER SERVICES INFORMATION

#### Applications Accepted for Filing

MARCH 23, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See section 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is

earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's Rules.)

### FEDERAL COMMUNICATIONS COMMISSION, VINCENT J. MULLINS, Secretary.

#### APPLICATIONS ACCEPTED FOR FILING

- DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE
- 20980-CD-TC-3-77 Western California Telephone Company, Consent to Transfer of Control from General Telephone & Electronics Corporation, Transferor, to General Telephone Company of California, Transferee. Stations: KMM654, Los Gatos, California; KMM655, Morgan Hill, California; and KMM656, Novato, California.
- 20981-CD-TC-4-77 Grants Radiotelephone Service, Inc., Consent to Transfer of Control from Vernon H. Johnson, Transferor, to Esther L. Johnson, Transferee. Stations: KUD201 and KUD202, Gallup, New Mexico; KKT397 and KWU270, Milan, New Mexico.
- 20982-CD-P-77 Vista Florida Telephone System (new), C.P. for a new 1-way station to operate on 158.10 MHz to be located at 3100 Dopey Drive, Lake Buena Vista, Florida.
- 20983-CD-P-2-77 The Mountain States Telephone & Telegraph Company (KOK 416) C.P. to replace transmitter and change antenna system operating on 152.63 and 152.69 MHz located 2.2 miles NE of Iona, Idaho.
- 20984-CD-MP-77 Radio Telephone Service, Inc. (KWU405), C.P. to change frequency from 152.21 MHz to 152.12 MHz located at East River Mountain, 2.5 miles SSW of Bluefield, Virginia.
- 20985-CD-P-(3)-77 Cook's Communications Corporation d.b.a. Answering by Birken (KOP265), C.P. for additional facilities to operate on 454.075 MHz, control at Loc. No. 2: Sacrifice Cliff, 3 miles South of Billings, Montana; and for additional facilities to operate on 152.21 MHz, base and 459.075 MHz, repeater to be located at a new site described as Loc. No. 3: East of Hwy. 87N, 16 miles South of Roundup, Montana.
- 20986-CD-MP-5-77 Delta Valley Radiotelephone Co., Inc. (KWU506) (air-ground), C.P. for additional facilities to operate on 72.88 and 72.92 MHz, repeater at Loc. No. 1: Atop north peak of Mt. Diablo, approximately 7.5 miles NE of Danville, California; and for additional facilities to operate on 72.32, 72.36 and 72.40 MHz, control to be located at a new site described as Loc. No. 2: 508 2nd Street, Antioch, California.
- 20987-CD-AL-(6)-77 Frank L. Yates d.b.a. Gulf Mobilphone, Consent to Assignment of License from Gulf Mobilphone, Assignor, to Answer Iowa, Inc., Assignee.

Stations: KFL885, Gulfport, Mississippi; KLF518 and KUC895, Pascagoula, Mississippi; KQZ734, Biloxi, Mississippi; KUC 894, Coolmarket, Mississippi; and KUS238, Picayune, Mississippi.

20988-CD-MP-2-77 Summit Mobile Radio Co. (KCI304), C.P. to replace transmitter, change antenna system and relocate facilities operating on 152.12 MHz at Loc. No. 1 to be located at a new site described as Loc. No. 3: Granite Hill 1100' North of Winthrop Street and 2½ miles West of Augusta, Manchester, Maine.

20989-CD-P-77 Phone Depots, Inc., d.b.a. Mobilphone Radio System (KEA254), C.P. for additional facilities to operate on 454.350 MHz to be located at a new site described as Loc. No. 10: 98 Kendall Drive, Sayreville, New Jersey.

20990-CD-P-3-77 Keith Van Buren, d.b.a. Dome Communications (KLF516), C.P. for additional facilities to operate on 152.09 MHz at Loc. No. 1: Little Goose Peak, 16.6 miles SW of Sheridan, Wyoming; also additional facilities on 459.225 MHz, repeater at Loc. No. 1; and for additional facilities, operating on 454.225 MHz, control to be located at a new site described as Loc. No. 3: Sheridan County Airport, Sheridan, Wyoming.

20991-CD-P-77 Tadlock's Radio Dispatch (KMA259) C.P. for additional facilities to operate on 454.100 MHz to be located at Loc. No. 2: Bald Mountain, 5 miles SE of Guinda, California.

20992-CD-P-6-77 Michigan Bell Telephone Company (new) C.P. for a new station to operate on 152.51 152.66 152.78 454.500 & 454.600 MHz to be located 2 miles North of Mt. Clemens, Michigan.

20994-CD-P-7-77 Michigan Bell Telephone Company (KQA772) C.P. to change antenna system operating on 152.51 MHz, change frequency from 152.75 MHz to 152.69 MHz and for additional facilities to operate on 152.60 454.375 & 454.525 MHz located at 503 South Saginaw, Flint, Michigan.

20995-CD-P-77 Michigan Bell Telephone Company (KQA812) C.P. to replace transmitter and change frequency from 152.51 MHz to 152.69 MHz located at 5980 Wildcat Road, 10 miles NW of Port Huron, Michigan.

#### MAJOR AMENDMENTS

Message Center, Inc., 22130-CD-MP-(3)-76 (KWT998), near Underhill, Vermont, at Mt. Mansfield.

At Loc. No. 2: Amend the base frequency to 152.15 MHz and the repeater frequency to 454.200 MHz.

At Loc. No. 3: Amend the control frequency to 459.200 MHz.

All other particulars to remain as reported on PN No. 809 dated June 7, 1976.

#### INFORMATIVE

The following applications is a Major Action as defined by Section 1.1305 of the Commission's Rules concerning the implementation.

20777-CD-P-77 American Radio-Telephone Service, Inc.—No. 3: Goldmine Rd. between Olney and Brookville, Maryland; No. 4: Near Conway and Patuxent, Maryland; No. 7: 600 ft. east from Trs 112 and 190 and 500 ft. Southeast of Seneca, Maryland.

#### RURAL RADIO SERVICE

60244-CR-P-77 RCA Alaska Communications, Inc. (new), C.P. for a new Central Office station to operate on 152.57 MHz to be located, 0.4 mile North of downtown Sand Point, Alaska.

60245-CR-P-77 RCA Alaska Communications, Inc. (new), C.P. for a new Rural Subscriber station to operate on 157.83

MHz to be located in Village .5 mile NNW of Squaw Harbor Airport, Squaw Harbor, Alaska.

60246-CR-P/L-77 The Mountain States Telephone & Telegraph Company (new), C.P. for a new Rural Subscriber-Fixed station to operate on 157.77 MHz to be located 6.2 miles South-Southwest of Table Rock, Wyoming.

60242-CR-TC-77 Western California Telephone Company, Consent to Transfer of Control from General Telephone & Electronics Corporation, Transferor to General Telephone Company of California, Transferee. Station: KVI58, Temporary-Fixed.

60243-CR-TC-77 Grants Radiotelephone Service, Inc., Consent to Transfer of Control from Vernon H. Johnson, Transferor to Esther L. Johnson, Transferee. Station: KOA47, Temporary-Fixed.

POINT TO POINT MICROWAVE RADIO SERVICE

1874-CF-P-77 The Pacific Telephone and Telegraph Company (KNL75), 1.2 miles WNW of Lodi, Oregon, Lat. 38°08'31" N., Long. 121°18'58" W. C.P. to increase antenna structure height and to add a new point of communication on frequencies 11055V, 10895V MHz toward Collegeville, Oregon, on azimuth 146.9 degrees.

1875-CF-P-77 Same (new), 2 miles East of Collegeville, Oregon, Lat. 37°53'55" N., Long. 121°06'33" W. C.P. for a new station on frequencies 11265V, 11585V MHz toward Lodi, Oregon on azimuth 326.1 degrees and 11265V, 11585V MHz toward Modesto 2, Oregon, on azimuth 160.8 degrees.

1876-CF-P-77 Same (new), Modesto 2, 1025 13th Street, Modesto, Oregon, Lat. 37°38'36" N., Long. 120°59'51" W. C.P. for a new station on frequencies 11055V, 10895V MHz toward Collegeville, Oregon, on azimuth 340.9 degrees.

1878-CF-P-77 American Telephone and Telegraph Company (new), Kansas City, 2, 1425 Oak Street, Kansas City, Missouri, Lat. 39°05'47" N., Long. 94°34'41" W. C.P. for a new station on frequency 4030H MHz toward Oak Grove, Missouri, on azimuth 110.7 degrees.

1879-CF-P-77 Same (new), 3.5 miles SSE of Oak Grove, Missouri, Lat. 38°57'30" N., Long. 94°06'43" W. C.P. for a new station on frequencies 4070H MHz toward Kansas City 2 on azimuth 290.9 degrees and 4070 MHz toward Holden, Missouri, on azimuth 149.4 degrees.

1880-CF-P-77 Same (new), 3.3 miles E of Holden, Missouri, Lat. 38°42'26" N., Long. 93°55'20" W. C.P. for a new station on frequencies 4030H MHz toward Oak Grove on azimuth 329.5 degrees and 4030 H MHz toward Windsor, Missouri, on azimuth 109.6 degrees.

1881-CF-P-77 Same (new), 3.7 miles N of Windsor, Missouri, Lat. 38°35'43" N., Long. 93°31'26" W. C.P. for a new station on frequency 4070H MHz toward Holden, Missouri, on azimuth 289.8 degrees.

1882-CF-P-77 Same (KQB42), Alexandria, 3.75 miles E of Johnstown, Ohio, Lat. 40°09'21" N., Long. 82°38'51" W. C.P. to change polarization from vertical to horizontal on frequencies 3770, 3850, 3930, 4010, 4090, 4170 MHz toward Columbus, Ohio.

1883-CF-P-77 Same (KQO74), Columbus 2, 111 North Fourth Street, Columbus, Ohio, Lat. 39°57'54" N., Long. 82°59'51" W. C.P. to change polarization from vertical to horizontal on frequencies 3730, 3810, 3890, 3970, 4050, 4130 MHz toward Alexandria, Ohio.

1896-CF-P-77 The Mountain States Telephone and Telegraph Company (KKK40), El Paso SE, 6045 Griems Road, El Paso, Texas, Lat. 31°46'07" N., Long. 100°24'50" W., C.P. to increase antenna structure height and to add frequencies 2117.0H

6004.5H 6123.1H MHz toward Frank Mt., Texas.

1897-CF-P-77 (KKK41), S. Frank Mt., 4 miles NW of El Paso, Texas, Lat. 31°51'46" N., Long. 106°29'26" W., C.P. to increase antenna structure height and add frequencies 2167.0H, 6256.5H, 6375.2H, MHz toward El Paso SE, Texas.

1921-CF-P-77 Southwestern Bell Telephone Company (KKB58), 424 South Detroit Street, Tulsa, Oklahoma, Lt. 36°09'10" N., Long. 95°59'12" W., C.P. to change frequencies 6056.4H to 6034.3H 10755.0V to 10915.0V MHz toward Vera, replace transmitters on frequencies 6056.4H 10755.0V MHz toward Vera and replace antenna on frequencies 6056.4H 10755.0V MHz toward Vera, Oklahoma.

1922-CF-P-77 Same (KKB57), 3.4 miles NW of Vera, Oklahoma, Lat. 36°28'44" N., Long. 95°55'45" W., C.P. to change frequencies 6308.4H to 6286.2V, 11685.0V to 11525.0V MHz toward Tulsa, Oklahoma, 6323.3H to 6286.2V, 11405.0V to 11665.0V MHz toward Bartlesville, Oklahoma, to replace transmitters on frequencies 6308.4H 11665.0V MHz Tulsa, 6232.3H 11405.0V Bartlesville and replace antenna on frequencies 6308.4H, 11685.0V MHz toward Tulsa 6323.3H, 11405.0V MHz toward Bartlesville, Oklahoma.

1923-CF-P-77 Same (KKB56), 119 East 6th Street, Bartlesville, Oklahoma, Lat. 36°44'50" N., Long. 95°58'36" W., C.P. to change frequencies 6071.2H to 6034.2H, 10955.0V to 11115.0V MHz toward Vera, Oklahoma, replace transmitters 6071.2H, 10955.0V MHz toward Vera and replace antenna on frequencies 6071.2H, 10955.0V MHz toward Vera, Oklahoma.

1930-CF-P-77 General Telephone Company of the Northwest, Inc. (WAY64), Everett CA, 426 Casino Road, Everett, Washington, Lat. 47°55'19" N., Long. 122°13'34" W., C.P. to increase antenna structure height, to add a new point of communication on frequencies 10895.0V, 10975 MHz toward Cmis, Washington, and move antenna on frequency 6241.7H MHz toward RTSM, Washington.

1931-CF-P-77 Same (KPJ97), 2 miles ENE of Camano, Washington, Lat. 48°11'21" N., Long. 122°29'38" W., C.P. to increase antenna structure height, to add a new point of communication on frequencies 11425V, 11505V MHz twd. Everett CA, on azimuth 146.2 degrees and replace antenna on frequency 11345V MHz toward OKHR, Washington.

1934-CF-P-77 The Mountain State Telephone and Telegraph Company (KXQ87), 1919 Capitol Avenue, Cheyenne, Wyoming, Lat. 41°08'11" N., Long. 104°49'00" W., C.P. to increase antenna structure height and move antenna on frequency 6249.1H MHz toward Archer, Wyoming.

1898-CF-P-77 Eastern Microwave, Inc. (WDD 61) Huffs-Church Road, Fredericksville, Pennsylvania, Lat. 40°27'27" N., Long. 75°39'55" W., Construction permit to add 6063.8H MHz toward Easton and Allentown, both in Pennsylvania, on azimuths 53.1 and 53.9 degrees, respectively.

1929-CF-MP-77 United Video, Inc. (KSP 98) .9 mile East of Effingham, Illinois Lat. 39°07'35" N., Long. 88°31'08" W., Construction permit to add 6360.3H MHz toward Olney, Illinois, on azimuth 138.8 degrees.

Garden State MicroRelay, Inc. Received timely filed Renewals for the following stations: 7851-CF-R-76, KEM 56, Millmay, New Jersey; 7852-CF-R-76, WSM 72, Swainton, New Jersey; 7853-CF-R-76, KEM 55, Chatsworth, New Jersey.

1832-CF-P-77 American Telephone and Telegraph Company (KJM71), 5.5 miles S of Jasper, Florida Lat. 30°26'17" N., Long. 82°56'17" W., C.P. to change polarization

horizontal and vertical on frequencies 3750, 3830, 3910, 4070, 4150, 4198 MHz toward Lake City, and from vertical to horizontal 3930, 4010, 4090 MHz toward Lake City, Florida.

1833-CF-P-77 General Telephone Company of the Northwestern, Inc. (new), 751 Mansfield, Washington Lat. 46°16'42" N., Long. 119°16'34" W., C.P. for a new station on frequencies 10895.0V, 11075.0V MHz toward Badger Hill PR on azimuth 213.1 degrees and from passive reflector Kennewick on azimuth 102.8 degrees.

1834-CF-P-77 Same (WHT64), Kennewick Hill, 4916 W. Clearwater, Kennewick, Washington, Lat. 46°12'47" N., Long. 119°11'09" W., C.P. to add a new point of communication on frequencies 11525V, 11605V MHz toward Badger Hill, Washington, on azimuth 282.9 degrees.

1836-CF-P-77 Southwestern Bell Telephone Company (new), 301 West Whaley, Longview, Texas, Lat. 32°29'59" N., Long. 94°44'29" W., C.P. for a new station on frequency 3710H MHz toward East Mtn. RS, Texas, on azimuth 315.5 degrees.

1837-CF-P-77 Same (new), 2.0 miles NW of East Mountain, Texas, Lat. 32°36'36" N., Long. 94°52'11" W., C.P. for a new station on frequency 4070H MHz toward Longview, Texas, on azimuth 135.4 degrees.

1851-CF-P/L-77 RCA Alaska Communications, Inc. (WAS431), Aggie Hill 32.07, 26 miles NW of Fairbanks, Alaska, Lat. 65°13'03" N., Long. 148°03'26" W., C.P. for a new station on frequencies 6152.8H MHz toward Livengood, Alaska, on azimuth 334.8 degrees 6093.5H MHz toward Pedro, Alaska, on azimuth 127.6 degrees and 6123.1V MHz toward Pmp Str 7, Alaska on azimuth 315.4 degrees.

1852-CF-P/L-77 Same (WAH420), Stuck 88 miles Richardson Hwy. 12 miles Copper, Alaska Lat. 61°47'29" N., 145°15'14" W., C.P. for a new station on frequencies 6125.8V MHz toward Gakona on azimuth 354.7 degrees, 6093.5V MHz toward Kimball Pass on azimuth 158.6 degrees and 6123.1H MHz toward Pmp Str 11, Alaska on azimuth 340.3 degrees.

CORRECTION

Public Notice No. 850, dated March 21, 1977 contained a page 8 of the previous week's public notice (March 14, 1977), in error. That page 8 is now deleted from the Public Notice of March 21.

[FR Doc.77-10400 Filed 4-7-77;8:45 am]

FM AND TV TRANSLATOR APPLICATION READY AND AVAILABLE FOR PROCESSING

Adopted: March 30, 1977.

Released: April 5, 1977.

Notice is hereby given pursuant to §§ 1.572(c) and 1.573(d) of the Commission's rules, that on May 16, 1977, the TV and FM translator applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to §§ 1.227(b) (1) and 1.519 (b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on May 13, 1977, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on May 13, 1977.

The attention of any party in interest desiring to file pleadings concerning any

pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580 (i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS  
COMMISSION,  
VINCENT J. MULLINS,  
Secretary.

#### UHF TV TRANSLATOR APPLICATIONS

- BPIT-3198 (K78CI), Hartsel, Antero Junction and Eleven Mile Reservoir, Colorado. Req: To change frequency to channel 64, 770-776 MHz.
- BPIT-3199 (new), Hartsel, Colorado, Gunnison County Television, Inc. Req: Channel 66, 782-788 MHz, 100 watts. Primary: KWGN-TV, Denver, Colorado.
- BPIT-3201 (new), Colorado Springs and Manitou Springs, Colorado, University of Southern Colorado. Req: Channel 21, 512-518 MHz, 100 watts. Primary: KTSC-TV, Pueblo, Colorado.
- BPIT-3202 (new), Silt and Rural Areas and Upper Four Mile Creek, Colorado, Garfield County. Req: Channel 67, 788-794 MHz, 100 watts. Primary: KBTV-TV, Denver, Colorado.
- BPIT-3207 (K72DH), Dry Lake, Crystal and Ute, Nevada, Moapa Valley TV Maintenance District. Req: To change principal community to Overton, Logandale and Moapa Area, Nevada, change primary TV Station to KSL-TV, Channel 5, Salt Lake City, Utah.
- BPIT-3209 (K77AW), Wallowa Valley, Oregon, Wallowa Valley TV Association, Inc. Req: change frequency to channel 65, 776-782 MHz, output power to 100 watts.
- BPIT-3210 (K81AF), Wallowa Valley, Oregon, Wallowa Valley TV Association, Inc. Req: To change frequency to channel 63, 764-770 MHz.
- BPIT-3211 (new), Pickstown, South Dakota, State Board of Directors for Educational Television. Req: Channel 61, 752-758 MHz, 10 watts. Primary: KTSD-TV, Pierre, South Dakota.
- BPIT-3212 (new), St. George, Utah, Washington County Television Dept. Req: Channel 69, 800-806 MHz, 100 watts. Primary: KLAS-TV, Las Vegas, Nevada.

#### UHF TV TRANSLATOR APPLICATIONS

- BPIT-3215 (new), Philadelphia, Pennsylvania, Spanish International Communications. Req: Channel 35, 596-602 MHz, 1,000 watts. Primary: WXTV-TV, Paterson, New Jersey.
- BPIT-3216 (new), Augusta, Kentucky, Kentucky State Board of Education. Req: Channel 56, 722-728 MHz, 100 watts. Primary: WCVN-TV, Covington, Kentucky.
- BMPTT-945 (W27AB), Canton, Clyde, Waynesville and Hazelwood, North Carolina, University of North Carolina. Req: To increase output power to 1,000 watts.
- BMPTT-946 (W59AD), Andrews, Murphy and Robbinsville, North Carolina, University of North Carolina. Req: To increase output power to 1,000 watts.

#### CORRECTION

##### VHF TV TRANSLATOR APPLICATION

The following entry appeared on the Public Notice (Mimeo No. 68379) released August 4, 1976, listing translator application which would be considered as ready and available for processing on September 16, 1976.

BPITV-5621 (new), Keystone Valdez Pipeline Camp, Alaska, Northern Television, Incorporated. Req: Channel 12, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, Anchorage, Alaska.

The entry is corrected to read as follows:

BPITV-5621 (new), Keystone Valdez Pipeline Camp, Alaska, Northern Television, Incorporated. Req: Channel 4, 10 watts. Primary: KTVA-TV, KENI-TV, KIMO-TV, Anchorage, Alaska.

The dates appearing on the title page of this Public Notice will now apply to the above application.

#### VHF TV TRANSLATOR APPLICATIONS

- BPITV-5774 (K02DL), Salida, Colorado, Salida TV Translator Association. Req: To change frequency to channel 9, 180-186 MHz.
- BPITV-5775 (new), Cherry Creek, South Dakota, Cherry Creek TV Club. Req: Channel 2, 54-60 MHz, 1 watt. Primary: KHSD-TV, Lead, South Dakota.
- BPITV-5776 (new), Cherry Creek, South Dakota, Cherry Creek TV Club. Req: Channel 8, 180-186 MHz, 1 watt. Primary: KIVV-TV, Lead, South Dakota.
- BPITV-5777 (new), De Norte, Colorado, Parker Hill TV Association. Req: Channel 4, 66-72 MHz, 10 watts. Primary: KNME-TV, Albuquerque, New Mexico.
- BPITV-5779 (new), Hayes Center, Nebraska, Hayes Center Community Club. Req: Channel 4, 66-72 MHz, 1 watt. Primary: KLOE-TV, Goodland, Kansas.
- BPITV-5780 (new), Wawona, California, Wawona Community Television Association. Req: Channel 4, 66-72 MHz, 1 watt. Primary: KVIE-TV, Sacramento, California.
- BPITV-5781 (new), Bethel, Alaska, City of Bethel. Req: Channel 2, 54-60 MHz, 10 watts. Primary: KENI-TV, Anchorage, Alaska.
- BPITV-5782 (new), Klawock, Alaska, Klawock School Board. Req: Channel 2, 54-60 MHz, 10 watts. Primary: KAKM-TV, KENI-TV, KIMO-TV, and KTVA, Anchorage, Alaska.
- BPITV-5783 (K08FJ), Alton, Utah, Long Valley TV. Req: Change frequency to channel 11, 198-204 MHz, increase output power to 10 watts.
- BPITV-5784 (K10FJ), Alton, Utah, Long Valley TV. Req: Change frequency to channel 9, 186-192 MHz, increase output power to 10 watts.

#### VHF TV TRANSLATOR APPLICATIONS

- BPITV-5785 (K12HD), Alton, Utah, Long Valley TV. Req: Change frequency to channel 13, 210-216 MHz, increase output power to 10 watts.
- BPITV-5786 (new), Orderville and Glendale, Utah, Long Valley TV. Req: Channel 7, 174-180 MHz, 1 watt. Primary: KUED-TV, Salt Lake City, Utah.
- BPITV-5787 (New), Evanston and Upper Bear River Valley, Wyoming, Upper Bear River TV Service. Req: Channel 6, 82-88 MHz, 5 watts. Primary: KUED-TV, Salt Lake City, Utah.

#### FM TRANSLATOR APPLICATIONS

- BPFT-398 (new), Dubois, Wyoming, Riverton Broadcasting Co., Inc. Req: Channel 292, 106.3 MHz, 10 watts. Primary: KTAK-FM, Riverton, Wyoming.
- BPFT-399 (new), Dubois, Wyoming, Fremont Broadcasting Inc. Req: Channel 296, 101.7 MHz, 1 watt. Primary: KDLY-FM, Lander, Wyoming.
- BPFT-401 (K228AB), Upper Bear River & Evanston, Wyoming, Kilburn I Porter tr/ as

Upper Bear River TV Service. Req: To change principal community to Upper Bear River Valley, Evanston plus Carter, Wyoming, output power to 10 watts in two directions.

[FR Doc.77-10402 Filed 4-7-77; 8:45 am]

#### STANDARD BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: March 21, 1977.

Released: March 24, 1977.

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on May 10, 1977, the standard broadcast applications listed in the attached Appendix below will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.591(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on May 9, 1977, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. by the close of business on May 9, 1977. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached Appendix below by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to § 1.571(c) of the Commission's rules.

The attention of any party in interest desiring to file pleadings concerning any pending standard broadcast applications, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS  
COMMISSION,  
VINCENT J. MULLINS,  
Secretary.

- BP-20,240 KAPR, Douglas, Arizona, K.A.P.R., Inc. Has: 930 kHz, 1 kW, Day. Req: 930 kHz, 2.5 kW, Day.
- BP-20,241 KKLS, Rapid City, South Dakota, James River Broadcasting Company. Has: 920 kHz, 1 kW, Day. Req: 920 kHz, 5 kW, DA-Day.
- BP-20,242 WVSA, Vernon, Alabama, Lamar County Broadcasting Company. Has: 1380 kHz, 1 kW, Day. Req: 1380 kHz, 5 kW, Day.
- BP-20,244 WAVL, Apollo, Pennsylvania, Tri-Borough Broadcasting, Inc. Has: 910 kHz, 1 kW, Day. Req: 910 kHz, 5 kW, DA-Day.
- BP-20,245 WXLW, Speedway, Indiana, Shirk, Inc. Has: 950 kHz, 5 kW, DA-Day (Indianapolis, Indiana). Req: 950 kHz, 5 kW, DA-2, U (Speedway, Indiana).
- BP-20,246 New, Dobson, North Carolina, Dobson Broadcasting Company. Req: 1560 kHz, 2.5 kW (500 W-CH), Day.
- BP-20,247 KWBZ, Englewood, Colorado, Western Broadcasting Corporation. Has: 1150 kHz, 5 kW, Day. Req: 1150 kHz, 1 kW, 5 kW-L.S, DA-N, U.
- BP-20,248 WRSC, State College, Pennsylvania, State College Communications Corporation. Has: 1390 kHz, 1 kW, Day. Req: 1390 kHz, 2.5 kW, Day.

BP-20,249 New, Pearl, Mississippi, Mid South Media Inc., Req: 1190 kHz, 1 kW, Day.

BP-20,252 WRNG, North Atlanta, Georgia, Ring Radio Company, Has: 680 kHz, 25 kW, Day, Req: 680 kHz, 10 kW, 25 kW-LS, DA-N, U.

## APPENDIX

BMP-14,129 WVCG, Coral Gables, Florida, Independent Music Broadcasters, Incorporated, Has Lic: 1080 kHz, 500 W, 10 kW-LS, DA-2, U. Has CP: 1080 kHz, 10 kW, DA-2, U. Req: 1080 kHz, 10 kW, 50 kW-LS, DA-2, U.

BP-19,922 KARV, Russellville, Arkansas, Horne Industries, Inc. Has: 1490 kHz, 250 W, 1 kW-LS, U. Req: 610 kHz, 500 W, 1 kW-LS, DA-2, U.

BP-20,117 WAMB, Donelson, Tennessee, Great Southern Broadcasting Company, Inc. Has: 1190 kHz, 250 W, Day, Req: 1170 kHz, 5 kW (500 W-CH), DA-2, Day.

BP-20,146 WVJP, Caguas, Puerto Rico, Borinquen Broadcasting Company, Has: 1110 kHz, 250 W, U. Req: 1110 kHz, 500 W, 2.5 kW-LS, U.

BP-20,164 KFAX, San Francisco, California, Argonaut Broadcasting Company, Has: 1100 kHz, 1 kW, 50 kW-LS, DA-Day, S.H. Req: 1100 kHz, 50 kW, DA-2, U.

BP-20,181 WMCL, McLeansboro, Illinois, Community Service Broadcasting, Inc. Has: 1060 kHz, 250 W, Day, Req: 1060 kHz, 2.5 kW, DA-Day.

BP-20,202 New, Ontario, Ohio, GSM Media Corporation, Req: 1440 kHz, 1 kW, DA-Day.

BP-20,214 WKYK, Burnsville, North Carolina, Mark Media, Inc. Has: 1540 kHz, 1 kW, Day, Req: 940 kHz, 250 W, 1 kW-LS, DA-N, U.

BP-20,230 WFSP, Pinellas Park, Florida, Pinellas Radio Corporation, Has: 570 kHz, 500 W, DA-Day, Req: 570 kHz, 500 W, DA-2, U.

BP-20,231 WINI, Murphysboro, Illinois, Radio Station WINI, Has: 1420 kHz, 500 W, Day, Req: 1420 kHz, 500 W, DA-N, U.

BP-20,253 KLUC, North Las Vegas, Nevada, KLUC Broadcasting Company, Has: 1140 kHz, 10 kW, Day (Las Vegas), Req: 1140 kHz, 2.5 kW, 10 kW-LS, DA-N, U (North Las Vegas).

BP-20,254 WKMC, Roaring Springs, Pennsylvania, Cove Broadcasting Company, Inc. Has: 1370 kHz, 1 kW, Day, Req: 1370 kHz, 5 kW, DA-Day.

BP-20,273 WIBR, Baton Rouge, Louisiana, Community Broadcasting Company, Inc. Has: 1300 kHz, 1 kW, DA-2, U. Req: 1300 kHz, 1 kW, 5 kW-LS, DA-2, U.

BP-20,550 WCDS, Glasgow, Kentucky, John M. Barrick, Has: 1440 kHz, 1 kW, Day, Req: 1440 kHz, 5 kW, DA-Day.

BP-20,658 KHVH, Honolulu, Hawaii, KHVH, Inc. Has: 1040 kHz, 5 kW, U. Req: 1040 kHz, 10 kW, U.

APPLICATION DELETED FROM PUBLIC NOTICE OF NOVEMBER 22, 1974 (MIMEO 33282)

BP-19730 KHVH, Honolulu, Hawaii, KHVH, Inc. Has: 1040 kHz, 5 kW, U. Req: 1010 kHz, 10 kW, U. (Assigned New File Number BP-20,688).

[FR Doc. 77-10401 Filed 4-7-77; 8:45 am]

[Docket No. 21183; FCC 229]

**AUTOMATION ELECTRONICS CORP.  
AND WILL-WALK, CO.**

**Order To Show Cause, Memorandum  
Opinion and Order**

Adopted: March 24, 1977.

Released: April 7, 1977.

In the matter of Automation Electronics Corp., Model 1001 Call Sequencing

System, Docket No. 21183, F.C.C. Telephone Equipment, Reg. No. AAF993-62778-CD-N; Automation Electronics Corp., Model 501-3 Rotary Announcer, F.C.C. Telephone Equipment, Reg. No. AAF993-62736-AN-N; Will-Walk Company, Model 501-3 Rotary Announcer, F.C.C. Telephone Equipment, Reg. No. AAH92-62771-AN-N; notice filing requesting additional trade name for Will-Walk Company, Model 501-3 Rotary Announcer, File No. 160-CX-77.

1. We have before us a petition filed by the American Telephone and Telegraph Company ("AT&T") on September 29, 1976, seeking reconsideration of a registration grant of August 18, 1976 (Public Notice given August 23, 1976) to Automation Electronics Corporation ("Automation") for its Model 1001 Call Sequencing System,<sup>1</sup> under our telephone equipment registration program.<sup>2</sup> Automation, and its predecessor the Will-Walk Company ("Will-Walk") have variously attempted to apply the registration program's short-form application procedures, its "grandfathering" provisions, and its relaxation of the requirement for using standard plugs during a transition period, to their products. As will be developed in more detail, infra, a problem arose regarding our grant of short-form registration to Automation's Model 1001 Call Sequencing System, and the telephone companies' subsequent obligation to provide for its connection to the telephone network, which led to AT&T's seeking of reconsideration, and to our action in this order.

## BACKGROUND

2. In our First Report and Order in Docket No. 19528, we established a "grandfathering" provision exempting terminal equipment connected to the telephone network prior to the effective date of the new Part 68 from registration rules, 56 F.C.C. 2d 593, 613 n. 36 (1975). We subsequently explained that the purpose of the "grandfathering" provision

<sup>1</sup> AT&T's petition was filed more than thirty days after public notice was given of the grant, and thus is procedurally defective (see 47 U.S.C. 415, 47 CFR 1.106(f)). However, we are treating the petition as a complaint filed under 47 CFR 68.400.

<sup>2</sup> The subject matter of this decision is ancillary telephone equipment (a call distributing device, and answering equipment), thus we here reference only those of our previous decisions concerning telephone equipment registration which are relevant to such equipment. First, in Docket No. 19528, we established the equipment registration program, short-form registration procedures, "grandfathering" privileges, and transition-period procedures. See 56 F.C.C. 2d 593 (1975); 57 F.C.C. 2d 1216 (1976); 59 F.C.C. 2d 83 (1976). Second, in Docket No. 20774, we established uniform standard means of connecting registered equipment to the nationwide telephone network. See 41 FR 17306, Apr. 23, 1976 and 41 FR 26694, July 12, 1976. The United States Court of Appeals, Fourth Circuit, by Order of April 28, 1976, stayed the entire program. This stay was modified by Order of June 16, 1976 to allow the program to become effective as to customer-provided data and ancillary equipment, including the Automation and Will-Walk equipment.

was to afford "proper recognition to the millions of items of terminal equipment—produced by both carrier-affiliated and independent manufacturers—which are now and have been directly connected to the network with no evidence of having caused harm hereto, by granting them immunity from the registration requirements", 57 F.C.C. 2d 1216 (1976). Consistent with that purpose, we established a transition period during which "grandfathered" equipment might be connected to the telephone network without registration, and also established a short-form registration procedure for such equipment to ease the transition to registered status for all equipment after the expiration of the transition period.<sup>3</sup>

3. In a short-form application, the applicant is required to furnish us certification that the equipment had been directly connected to the telephone network as of the May 1, 1976 cut-off date and that it meets the standards of Part 68 of our rules, but without supporting exhibits which are required for a normal, long-form application. Detailed information and test results need not be submitted unless specifically requested.

4. In response to petitions seeking clarification of the "grandfathering", short-form, and transition-period procedures, we subsequently issued a declaratory ruling which defined the class of equipment which is eligible both for "grandfathering" and short-form registration as equipment of a type similar to equipment which was directly connected to the telephone network as of May 1, 1976, 59 F.C.C. 2d 83, 85-86 (1976). We further refined this definition of eligibility with the following subsidiary definitions:

"Of a type similar"—The same model of equipment, made by the same manufacturer; equipment of the same mechanical and electrical design, encompassing cosmetic variations of a manufacturer's product (e.g. color changes).

"Directly connected"—Any direct electrical connection, either by a telephone company or by a customer which was both (1) in accordance with a telephone company tariff and (2) without a protective connecting arrangement. This category of equipment includes all equipment supplied by telephone companies, as well as the following types of customer-provided equipment: Attested operators' headsets and conferencing devices, conformed telephone answering devices, equipment certified and connected pursuant to General Order No. 138 of the California Public Utilities Commission, and equipment connected by "special" entities under our tariffs.

We explained that unregistered equipment which is connected to the telephone network during the transition period as "grandfathered" equipment would be permitted to remain in service without registration during its useful life "unless subsequently modified", § 68.2(b) and (c), and defined this term as follows:

<sup>3</sup> 57 F.C.C. 2d at 1220. After the transition period, such equipment is required to be registered, either using the short-form or long-form registration procedures.

"Subsequently modified"—Equipment modifications other than repair operations which restore the equipment to the same functional operation it had prior to the failure which resulted in a repair operation; replacement of component parts with ones not comparable to the original ones.

Finally, we recognized that standard plugs and jacks may not be available during the transition period for connection of both registered and "grandfathered" equipment, and provided that such equipment need not be connected to the telephone network, during the transition period, using the standard plugs and jacks specified in our rules. Instead, we provided that the telephone companies could continue to use whatever means of connection they were then using for connection of telephone company-provided equipment, so long as they did not discriminate in the treatment of customer-provided equipment.<sup>4</sup>

5. Automation and Will-Walk had received three grants of certification of equipment by the California Public Utilities Commission pursuant to that Commission's General Order No. 138. Thus, if equipment covered by these grants had in fact been directly connected to the telephone network as of May 1, 1976, pursuant to the California telephone companies' tariffs, then it would be eligible both for "grandfathering" and short-form registration under our registration program.

6. On April 12, 1976 we received three applications for short-form registration, which appeared to cover only two different items of equipment. Will-Walk applied for registration of its Model 501-3 Rotary Announcer, and Automation applied for registration of its Model 501-3 Rotary Announcer. Automation also applied for registration of its Model 1001 Call Sequencing System. In the two Rotary Announcer applications, the Model 501-3 was described as:

\*\*\* an answering system which will answer multiple telephone lines with an announcement up to 5 minutes and is capable of delivering the message to all incoming lines at the same time, the endless loop announcement continues to play out until the last caller hangs up. The Rotary Announcer is ideal as a theater announcer, for weather reports, sports scores, ski conditions and similar uses.

The only description of any accessory equipment used in conjunction with the Model 501-3 Rotary Announcer was:

An accessory is available which allows the announce message to be changed by calling in from a remote location.

The Will-Walk Rotary Announcer application was assigned file number 37-C-76 and the Automation Rotary Announcer application was assigned file number 39-C-76.

7. The Call Sequencing System application, filed only by Automation, described the Model 1001 as:

<sup>4</sup> We recently extended the transition period during which unregistered "grandfathered" equipment may be connected from January 1, 1977 to June 1, 1977. See Order released December 28, 1976, FCC 76-1139.

\*\*\* an answering device which will answer multiple telephone lines, give a pre-recorded announce message, place the call on hold and indicate to the user by means of lamps flashing at different interval rates, the chronological order in which the calls were received.

8. On July 12, 1976, pursuant to § 68.204 of the rules, AT&T filed comments on these applications. First, AT&T noted that the two Rotary Announcer applications were "filed on behalf of different manufacturers having the same address appear to describe the same device with the same model number" but showed substantially different test results (although such results were not required for a short-form application, both applications included copies of information furnished the California Public Utilities Commission). Second, AT&T commented that none of the three applications should be granted as the applicants failed to demonstrate that the equipment involved had been connected to the telephone network as of May 1, 1976, the second condition for eligibility.

9. In response to AT&T, the "person responsible for preparing engineering information" (line 15 of the application form) and therefore the "person to contact for technical information" (line 16 on all three applications) stated that the two Rotary Announcer applications were for:

\*\*\* similar but not identical devices and hence should be issued separate numbers. Automation Electronics Corporation incorporated all assets and obligations of Will-Walk Company.

and in response to further questioning on this matter by our staff, expanded this description:

37-CX-76 (CPUC No. 0057) manufactured by Will-Walk. Will-Walk absorbed into Automation Electronics Corp. who assumed all goods and continued warranty and service.

39-CX-76 (CPUC No. 0214) manufactured by Automation Electronics Corp. Devices perform the same function. However, the Will-Walk 37-CX-76 is much different in appearance than 39-CX-76 of Automation Electronics Corp. 37-CX-76 is built in two separate units which connect with cables. 39-CX-76 is a single unit.<sup>5</sup>

10. Since AT&T had, in a separate submission, listed the Will-Walk Model 501-3 Rotary Announcer as eligible for "grandfathering," the staff concluded that it was also eligible for short-form registration, and granted that application (37-CX-76) on August 18, 1976.

11. Automation provided the staff with California telephone numbers to which the Rotary Announcer and Call Sequencing System had been connected as of May 1, 1976, and accordingly these two applications were granted, respectively on August 30, 1976 and August 18, 1976.<sup>6</sup> Thus, on the basis of information then before it, the staff properly granted

<sup>5</sup> Letter from Mr. D. Reginald Tibbetts, July 30, 1976.

<sup>6</sup> Grant of the Automation Rotary Announcer was delayed pending resolution of questions concerning its similarity to the Will-Walk device. Subsequently, AT&T made no objection to registration of the two Rotary Announcers.

all three short-form registration applications.

#### CONNECTION PROBLEMS

12. After we granted registration to the Model 1001, AT&T and Automation attempted to connect the Model 1001 to the telephone network in accordance with our rules, through the use of standard plug/jack arrangements specified in Part 68 of our rules. Through its meetings with Automation, AT&T became aware that the Model 1001 requires a series connection to the lamp leads of a key telephone system to provide the indication to the user "by means of lamps flashing at different interval rates" described in its registration application. In essence, the "lamps" described in the application were not Automation's lamps, but rather were those lamps which are already present in carrier-provided key telephone instruments.

13. While AT&T was not aware that Automation's Model 1001 would not function with the plug/jack arrangements in Part 68 of our rules, AT&T's California subsidiary, Pacific Telephone and Telegraph Company, obviously was. Pacific was providing a special combination of two connectors, in California, or connection of Automation's equipment (and others), which was specified by the California Public Utilities Commission. Nevertheless, on September 29, 1976, AT&T filed a letter which requested our staff to reconsider its grant of registration, by delegated authority, to Automation's Model 1001. First, AT&T again alleged that the equipment had not been demonstrated to be of a type similar to equipment connected to the network as of May 1, 1976, pursuant to a telephone company tariff, and noted that the telephone number which Automation had supplied as such a demonstration had been taken out of service in 1974. Second, AT&T said:

\*\*\* although this could not be discerned by review of the short form application, the device cannot be connected in compliance with Part 68 of the rules. \*\*\*

It was finally determined that this device would not work with any of the standard plug and jack arrangements specified \*\*\*. Thus, we have the anomalous situation that although the equipment had been granted registration, it cannot be connected as registered equipment in accordance with § 68.104(a).

Our staff served a copy of this letter on Automation.

14. By letters dated October 16 and October 17, 1976, Automation addressed the issues raised by AT&T's letter. First, it indicated that there had been a typographical error in the supplied telephone number, and it supplied a corrected telephone number. Second, Automation also addressed the anomalous situation that this short-form registered equipment could not be connected to the network in accordance with the rules, and requested a waiver of the plug/jack requirement. On October 28, 1976, Automation requested an informal meeting with AT&T and Commission staff representatives, in order to resolve the outstanding problems.

15. At this November 9, 1976 meeting, it was agreed that: (1) Automation would substantiate the disputed fact that the Model 1001 had been directly connected to the telephone network in accordance with applicable telephone company tariffs as of May 1, 1976; (2) the Model 1001 in fact requires a series connection to the lamp leads of a carrier-supplied key telephone system for its operation; (3) that no present plug/jack arrangement in Part 68 will accommodate the requirement of a series connection to these lamp leads; (4) that Automation would submit a petition for rulemaking seeking amendment of our rules to accommodate the Model 1001;<sup>7</sup> and (5) if the Model 1001 in fact had been properly eligible for short-form registration, it also would be eligible for "grandfathering" treatment in the transition period, notwithstanding its concurrent status as registered equipment, and could therefore be connected by the telephone company using alternative means to those specified in Part 68, in accordance with our transition period procedures.<sup>8</sup> AT&T took the position that if Automation could not sustain the eligibility of the Model 1001 for "grandfathering" treatment, it would not provide such alternative means of connection.

16. On November 15, 1976, Automation submitted documents which purported to establish the "grandfathered" status of the Model 1001. According to the submission, the Model 1001 had been certified by the California Public Utilities Commission on February 13, 1976, and one unit of equipment had been installed in San Francisco, at a stated location, on March 1, 1976 (well before May 1, 1976). The submission further alleged that notice of the connection of the Model 1001 at this location was given by telephone to Pacific Telephone and Telegraph Company (the carrier in San Francisco) on March 2, and that during March, a telephone repair-person had noticed the installed Model 1001 during a repair visit to the premises, and had presumably reported its presence to other telephone company officials.<sup>9</sup>

17. In this submission, Automation stated that the customer's premises involved:

\*\*\* were equipped with an amphenol connector consisting of a male and female 50 position ribbon plug and jack (called a bridging adapter by Pacific). The utility connector was unplugged, and the Model 1001 was inserted between them with no modification of the utility equipment.

<sup>7</sup> Such a petition was filed by Automation on January 6, 1977.

<sup>8</sup> Automation was apparently unaware of this alternative possibility until that meeting.

<sup>9</sup> Subsequently, Pacific Telephone personnel contacted the customer involved and requested the certification number for the equipment; on this basis Automation concludes that the repair-person had reported its presence. In any event, Automation regards the repair-person's observation of the equipment as actual notice to Pacific Telephone of the connection.

Automation concluded that since the connector was already installed, and constituted a utility-provided jack or connection or facility, this connection was made in accordance with the California Public Utility Commission's certification program, and with applicable telephone company tariffs.

18. On November 23, 1976, AT&T responded to Automation's submission. In its response, AT&T claimed that despite a careful review of Pacific Telephone and Telegraph Company records, and despite conducting interviews with appropriate personnel, it was unable to verify that Pacific had been notified of the connection of any customer-provided equipment at this customer's premises. It then took issue with Automation's claimed date of certification of the equipment by the California Commission, and alleged that it had not been certified until March 19, 1976, a date after Automation's claimed March 2, 1976 date of notification of the telephone company.

19. AT&T's response further reported the results of a visit by telephone company personnel to this customer's premises:

On November 19, 1976, since no verification of connection was otherwise available, telephone company personnel made a premises visit to (deleted) and observed that there was no Model 1001 in service nor was there any telephone company provided bridging adapter or other required jack arrangement. The device which was found at the customer's premises was the "Will Walk, Rotary Announce System (California Certification Number CPUC No. 0057) Model 501-3" and this device was connected in violation of both filed tariffs and the Rules of CPUC G.O. 138. Lawful connection of the Will Walk device in California could be only through a telephone company Type C bridging adapter, which, as noted was not utilized at (these premises).

While AT&T's November 19, 1976 visit did not establish whether the Model 1001 in fact had been connected as of May 1, 1976, some six months earlier, AT&T further noted Automation's own statement in its November 15, 1976 submission:

The Call Sequencer has remained connected to these phone lines continuously from 3-1-76.

and concluded that therefore, By Automation's own admission, the equipment which it found at the premises visit was the equipment which Automation had claimed was in place as of May 1, 1976 at these premises. The response concluded by again requesting that the Commission reconsider its grant of registration to the Model 1001.

20. On December 16, 1976, Automation submitted a reply to AT&T, supported by affidavits. For the first time, Automation now contended that the Model 1001 in fact is the same equipment as the Model 501-3 Rotary Announcers from the standpoint of Part 68 of our rules (see paras. 8 and 9 supra). According to Automation, the equipment installed at the disputed location was formed of a Model 501-3 rotary announcing device, with additional equipment added to accomplish call sequenc-

ing. Thus, Automation claimed that since the Model 501-3 rotary announcer is, without dispute, eligible for "grandfathering" and short-form registration, a modification thereof to add call sequencing functions (to form a Model 1001) did not change that status.

21. Automation replied on several bases. First, it indicated its intention to file an application to authorize the marketing of a modified Model 501-3 (modified to include call sequencing functions) under the trade name "Automation Electronics Co., Model 1001." Second, since in Automation's opinion, the call sequencing device is the same as the Model 501-3 in all respects "pertinent to the technical standards of the Registration Program" it would withdraw the short-form application for registration of the Model 1001 (although already granted) contingent upon our acceptance of the new, name-changing filing, and thereby moot any dispute concerning whether or not the Model 1001 was in fact installed at the disputed premises. In addition, Automation provided what it termed "a full explanation" of the development of the Models 501-3 and 1001, and of the disputed installation.

#### AUTOMATION'S DECEMBER 16, 1976, EXPLANATION

22. The Model 501-3 Rotary Announcer is a means of answering multiple telephone lines and delivering a pre-recorded message. It was sold to movie theaters and similar entities by the Will-Walk Company since that company's founding as a partnership in 1971. It is normally used in conjunction with key telephone systems, and is connected to the tip/ring and A/A1 connections of such systems through the use of a parallel, 50-position "ribbon" connector. Approximately 200 units of this equipment have been directly connected to the telephone network without harm.

23. In November, 1975, the partnership was dissolved, and one of the former partners acquired all assets of the partnership. He formed a new company, Automation Electronics, to manufacture the Model 501-3, and applied for and received a new California certificate in Automation's name for the product. In this same time period, Automation developed "an additional accessory for the Model 501-3 internal circuitry which doubled the flash rate of calls 'on hold' on the (key telephone system) instruments."<sup>10</sup> According to Automation, the sequencing accessory acted precisely the same as a basic answering device—calls were answered, were given a recorded message (e.g. "your call will be answered in turn"), and put on hold.

24. According to Automation, the addition of the call sequencing accessory to the Model 501-3 involved "no changes in the technical performance of the device required by the CPUC or FCC terminal equipment programs."<sup>11</sup> However, Auto-

<sup>10</sup> Affidavit of Automation Electronics Corp., December 16, 1976, p. 6.

<sup>11</sup> Id., p. 7.

mation admitted that the unit with call sequencing functions required a series connection to the key telephone system's lamp leads, which connection was not required unless the call sequencing function was added to the Model 501-3. In Automation's view, this change is not relevant to Part 68 of our rules.

25. As the call sequencing accessory proved to be a popular addition to the Model 501-3, Automation submitted an additional application for California certification under the trade name Model 1001 for the combination of the 501-3 Rotary Announcer and sequencing function accessory.

26. The equipment which was installed at the disputed premises as of May 1, 1976 was in fact the Model 501-3 Rotary Announcer, with additional equipment installed to perform call sequencing. Automation alleged that the modification of the Model 501-3 to add call sequencing was consistent both with the requirements of the California rules and with our rules, regarding changes to certified/registered equipment. Automation further alleged that its citation of this installation as evidence of connection of the Model 1001 as of May 1, 1976 was in good faith, and that this installation qualified the Model 1001 for "grandfathering" and short-form registration. Finally, Automation claimed that the California rules, and telephone company tariffs in California, permit the installation which was performed at the disputed premises—whereby the customer (and not the telephone company) unplugged two telephone company-provided connectors on the existing telephone company key telephone system, and inserted two customer-provided compatible connectors thereto.<sup>12</sup>

27. On January 14, 1977, AT&T submitted a final round of comments. In essence, AT&T responded by continuing to request reconsideration of the registration grant to the Model 1001 on the basic ground that it was ineligible for such registration (and for "grandfathering" treatment).

#### AT&T RESPONSE

28. First, AT&T argued that the Model 1001 is simply not "of a type similar" to the 501-3 equipment, by Automation's own admission, and cannot achieve eligibility for short-form registration and "grandfathering" treatment because of the predecessor equipment's undisputed eligibility for such treatment. By Automation's own admission, the "internal circuitry" of the Model 501-3 was modified (see para. 26, supra), and such modification is inconsistent with the Commission's definitions of "of a type" and "subsequently modified" (see para. 6, supra). In addition, AT&T noted that the added leads which connect to the lamp circuits require evaluation in addition to that of the rotary announcer alone, under Part 68.

<sup>12</sup> On December 17, 1976, Automation submitted the promised notice filing seeking authorization to use the trade name "Model 1001" for a Model 501-3 with call sequencing functions.

29. Second, AT&T argued that even if the equipment installed at the disputed premises is considered equivalent to the Model 1001 for eligibility, that installation itself violated both California's rules, and the applicable telephone company tariffs. Specifically, AT&T referred to § 3.1 of the California Public Utilities Commission's General Order No. 138 which requires notification of the customer to the telephone company of intent to use certified equipment, and to § 1.4 (a) of this Order which requires that connections of customer-provided equipment not require changes in or alterations of the equipment or other facilities of the utility. Moreover, AT&T cited Section IIA.2 of the applicable telephone company tariff which provides:

Pacific Telephone and Telegraph Company, Schedule Cal. P.U.C. No. 135-T.

II. Regulations applicable to exchange service.—A. General provisions. 2. All instrumentalities and equipment furnished by the Utility in connection with a customer's service shall be carefully used and only duly authorized employees of the Utility shall be allowed to connect, disconnect, move, change, or alter in any manner, any or all such instrumentalities and equipment.<sup>13</sup>

and referenced other tariff provisions which require the installation of a carrier-provided jack for certified customer-provided equipment, which jack was not ordered at the disputed installation.

#### DISCUSSION

30. We find from the foregoing that the Model 1001 Call Sequencing System was not connected to the telephone network as of May 1, 1976 under that name or description. Rather, a modified Model 501-3 Rotary Announcer was connected to the telephone network.

31. Automation's Call Sequencing System, either under the description Model 1001, or under other description, is not eligible for "grandfathering" status. Automation's admissions establish that the equipment which actually was connected to the telephone network as of May 1, 1976 was not "of a type similar" to the Model 501-3 Rotary Announcer whose "grandfathered" status is not disputed. Thus, the Call Sequencing System (under any designation) must establish its "grandfathered" status independent of the Rotary Announcer.

32. The only connection of the Call Sequencing System to the telephone network, to qualify that equipment as "grandfathered", which has been advanced, is at the disputed premises, and that connection was not performed in accordance with the applicable telephone company tariffs. The disputed installation, by Automation's admission, was performed not by the telephone company, but by others. The action of performing this installation involved disconnection of the telephone company's facilities—in this case the telephone company's key telephone system connectors—and such an operation can only be performed by authorized telephone

<sup>13</sup> Notice is hereby taken of this tariff provision.

company employees under the applicable tariff (see para. 29, supra.).

33. Similarly, the Call Sequencing System, either under the description Model 1001 or under other description, is not (and was not) eligible for short-form registration, because it was not directly connected, in accordance with telephone company tariffs, to the telephone network as of May 1, 1976.

34. It would appear, therefore, that our grant under delegated authority of short-form registration to the Model 1001 should be withdrawn, as it was based upon the false assumption that this equipment was in fact eligible for such procedures.

35. Automation's new notice filing seeks the use of the trade name "Model 1001" for its registered Model 501-3 equipment, so that this equipment, as modified, can be marketed as a call sequencing system based upon its outstanding registrations. If a change of trade name alone were involved, absent the entire recital herein of its purpose and effect, we would not be opposed to its acceptance. However, it is clear that the effect of the notice filing is to achieve indirectly that which cannot be achieved directly. Moreover, the notice filing itself is not in conformance with our rules.

36. The two applications in our files governing the Model 501-3 Rotary Announcer make no reference to connections to other equipment. Nor do they make reference to any internal equipment contained in the Rotary Announcer to achieve call sequencing functions. This material on file is inconsistent with Automation's statement contained in the notice filing which states:

This application requests authority to use an additional trade name for the Will-Walk Co. Model 501-3 rotary announcer (Registration No. AAH 992-62771-AN-N) which will emphasize an existing feature of the device, a call sequencing system.

If in fact that feature is presently "existing", then it is unauthorized. Section 68.214 of our rules provides:

No changes in registered equipment and registered protective circuitry shall be made without prior written notice to the Commission. If such change in registered terminal equipment or registered protective circuitry results in any change in the information furnished the Commission pursuant to § 68.200, the grantee shall submit a revised application for equipment registration in accordance with § 68.200.

If addition of the call sequencing functions to the Rotary Announcer was accomplished by connection to a new piece of equipment, such connections themselves would change the information furnished us pursuant to § 68.200(g), and would require a new application. If addition of the call sequencing functions was accomplished by modification of the internal design of the Rotary Announcer, § 68.214 would require at a bare minimum a prior notice filing of such change, and probably a full application, in view of the change of purpose of the equipment (§ 68.200(a)) and the addition of new interface leads to the lamp circuits (requiring evaluation under §§ 68.204



and 68.306 as "telephone connections"). No such filing had been received by the Commission until the instant notice filing.

37. Our intention in allowing notice filings, as opposed to full-blown revised applications, is to allow minor changes to be made to registered equipment during manufacture which do not affect compliance with our rules, while retaining a degree of administrative oversight. We did not and do not intend that this become a vehicle for changing a device's fundamental design, function, or purpose. Automation's Call Sequencing System is fundamentally dissimilar to its Rotary Announcer, adds additional circuitry to the Rotary Announcer, adds new interface leads to the Rotary Announcer, and most basically, cannot even be connected to the telephone network through the use of standard plugs and jacks as now specified. The Rotary Announcer can be so connected. The addition of the call sequencing functions to the Rotary Announcer is considerably more than a mere cosmetic change, and would destroy any "grandfatherable" Rotary Announcer unit's "grandfathered" status as well.

38. For this reason, Automation's notice filing dated December 17, 1976, file number 160-CX-77, is hereby rejected and returned as unacceptable for filing. Automation is cautioned not to represent as FCC-registered, or as "grandfathered", any such modification of the Rotary Announcer (whether Will-Walk's or Automation's) unless and until prior authority is received from this Commission for the modification.

39. We do not pursue here any non-complying modification of the Rotary Announcer which may have already taken place, because it is clear that no call sequencing devices have in fact been connected to the telephone network pursuant to our registration of the Model 501-3; those connections which have occurred were in California, pursuant to the requirements of the California Public Utilities Commission's rules. We are transmitting to the California Public Utilities Commission a copy of this decision for its information.

40. We are faced here with our first formal complaint under Part 68. Accordingly we wish to proceed in an abundance of caution to assure that appropriate procedures are employed. For that reason we shall use show cause procedures herein.<sup>19</sup>

#### ORDER

41. Accordingly, and for the reasons heretofore stated, is hereby ordered, that

<sup>19</sup> It should be noted that any withdrawal of registration herein would not be predicated upon any harm to telephone service. It would be based solely upon the equipment's ineligibility for short-form registration. Thus, our election of this procedure in this case should not be construed as precedent against more summary procedures where necessary or appropriate. Moreover, in such a new area, we must retain flexibility to adopt procedures appropriate to the matters before us, 47 U.S.C. 154(j).

Automation Electronics Corporation shall show cause, within thirty days after receipt of this order why F.C.C. Telephone Equipment Registration No. AAF993-62778-CD-N shall not be rescinded.

42. It is further ordered, That AT&T's petition for reconsideration of our grant of F.C.C. Telephone Equipment Registration No. AAF993-62678-CD-N is dismissed, as not in accordance with Section 1.106 of our rules, 47 CFR 1.106.

43. It is further ordered, That Automation Electronics Corporation's notice filing dated December 17, 1976, file number 160-CX-77 is hereby rejected and returned.

44. It is further ordered, That Automation Electronics Corporation and/or the Will-Walk Company shall cease and desist from representing as "grandfathered" or F.C.C.-registered their Rotary Announcer equipment if modified in violation of § 68.214 of our rules, 47 CFR 68.214.

FEDERAL COMMUNICATIONS  
COMMISSION,  
VINCENT J. MULLINS,  
Secretary.

[FR Doc.77-10405 Filed 4-7-77;8:45 am]

[Docket Nos. 21189-21190; File Nos. 4475-C5-P-73, 5056-CM-P-73]

**KLOTZ, HOWARD S./CORBUS, WILLIAM,  
AND MIDWEST CORP.**

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: March 7, 1977.

Released: April 1, 1977.

In re applications of Klotz, Howard S./Corbus, William, Docket No. 21189, File No. 4475-C5-P-73; and Midwest Corporation, Docket No. 21190, File No. 5056-CM-P-73; for construction permits in the Multipoint Distribution Service for a new station at Tacoma, Washington.

1. The Commission has before it the above-referenced applications of Klotz, Howard S./Corbus, William (Klotz), filed on December 18, 1972 and Midwest Corporation (Midwest), filed on January 10, 1973. Both applications propose Channel 1 operation in the Tacoma, Washington area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Klotz has twenty-one MDS construction permit applications pending and is permittee in San Bernardino, California; New Haven, Connecticut; and Atlantic City, New Jersey. Midwest, owned by APS, Inc., has MDS applications in twenty cities, including Winston-Salem and Greensboro, North Carolina and is permittee in Greenville, South Carolina.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services

which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:<sup>1</sup>

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Tacoma, Washington area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. It is further ordered, That Klotz, Howard S./Corbus, William, Midwest Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

WALTER R. HINCHMAN,  
Chief, Common Carrier Bureau.

[FR Doc.77-10407 Filed 4-7-77;8:45 am]

[Docket No. 21179; FCC 77-221]

#### TELEVISION RECEIVERS

Inquiry Regarding UHF Channel Readout

Adopted: March 24, 1977.

Released: March 25, 1977.

In the matter of UHF Channel Readout on Television Receivers.

#### INTRODUCTION

1. This inquiry is an offspring of proceedings in Docket 20719, which dealt with the accuracy of UHF television tuning systems. A number of the comments in that proceeding addressed the question of channel readout on UHF television receivers. Because the notice of proposed rulemaking did not propose changes in readout requirements, those comments could not be dealt with in the Report and Order in that proceeding (FCC 76-1063, 61 FCC 2d, 41 FR 52458,

<sup>1</sup> Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et. al., 55 FCC 2d 626 (1975).

November 30, 1976). We nevertheless recognized that the comments posed some legitimate questions concerning readout requirements and noted that, "These matters will be addressed in another proceeding in which all interested parties will be afforded an opportunity to comment."

2. The comments regarding channel readout in Docket 20719 were addressed to receivers equipped with 70-position UHF tuners in which the channel numbers are displayed on the face of the tuning knob. The substance of the comments was summarized as follows in paragraph 16 of the Report and Order:

First the complaint is that our rules permit only every other UHF channel number to be displayed, with marks between numbers to indicate the channels not displayed numerically (see § 15.68(d)(1)). Secondly, it is complained that the numbers are small in size and closely spaced, so that it is difficult to determine what channel has been tuned. Third, it is said that superior on-the-knob channel displays are available for minimal additional cost.

3. Our purpose here is to set out some preliminary views on the subject of channel readout and to solicit comment from interested persons. On the basis of our preliminary analysis, we are uncertain as to what, if any, changes should be made in our rules, and are therefore not proposing specific rule amendments. If the comments make a persuasive case for change, specific amendments which seem desirable will be made the subject of a Notice of proposed rulemaking, so that interested persons may focus on the specifics.

#### DISCUSSION

4. The mode of channel display complained of appears to be predominant in the small portable market and to be used in some larger receivers. It consists simply of a circle of channel numbers extending around the circumference of the UHF tuning knob. In most cases, 35 channel numbers are displayed. In some cases, two concentric circles of numbers are used to display 70 channel numbers, as illustrated below.



5. In such a channel display, the channel numbers are small and closely spaced for the purpose intended. Some people with less than perfect vision would have trouble in reading them. Many people would have difficulty at a distance greater than two feet. They are smaller than the VHF channel numbers and well below the optimum size. The spacing is undesirably close. On the other hand, most people have no difficulty in tuning receivers with this type of channel display, and we have never received a complaint from a receiver owner. People with limited vision will presumably select a receiver which displays larger channel numbers. We

have no reason to believe that the display of every other channel has any material effect on the viewing of channels not displayed numerically. Clearly, a requirement that all 70 UHF channels (140 digits) be numerically displayed, that the numbers be the same size as VHF numbers, and that they be more widely spaced would preclude this mode of channel display, which is preferred by receiver manufacturers and is apparently accepted by the public.

6. An alternative channel readout system is said to be available that utilizes two concentric discs, one for the units and one for the ten digits. In its comments in Docket 20719, Sarkes Tarzian states that such a system costs about 5 or 10¢ more than the system with all of the numbers on one disc. Since only ten numerals must be shown on the units disc (0-9) and only eight need be shown on the tens disc (1-8),<sup>1</sup> the numbers can easily be made the same size as the VHF channel numbers and every UHF channel number can be represented numerically. Such a system can be designed so that only the channel tuned is displayed and there is of course no doubt as to the channel which has been tuned.

7. In its reply comments in Docket 20719, on the other hand, General Instrument (GI) states that concentric disc readouts were available from GI and Sarkes Tarzian for nearly four years but were dropped, after considerable use, in favor of the more trouble free single disc alternate channel readout. GI states that problems were encountered in aligning the units and ten digits and the result was "very objectionable and confusing to the customer." GI further notes that numbers around the dial (other than the channel tuned) follow no logical sequence and are confusing to the viewer.<sup>2</sup> It suggests further that there may be a tradeoff between use of this readout mechanism and tuning accuracy.

8. On the basis of the information on hand, the difficulties recounted by GI do not seem to be insurmountable. Alignment errors we have seen—the tens digit will be somewhat higher or lower than the units digit—seem at worst annoying and presumably could be eliminated or minimized through improvements in design and manufacture. The illogical series of numbers around the dial could presumably be eliminated by covering or blacking the dial except where the channel tuned is displayed. These would seem to be minor problems, though their elimination could increase the cost of the readout mechanism. However, any tradeoff between use of a concentric disc readout mechanism and detented tuning accuracy is a more serious matter. The

<sup>1</sup> By comparison, the single disc VHF dial must accommodate 16 digits, and a single disc dial with numerical display of 70 UHF channels would have to accommodate 140 digits.

<sup>2</sup> In a sample made available to the Commission, when the readout was set at Channel 26, the following additional numbers appeared on the dial, reading clockwise: 15, 4, 3, 82, 71, 60, 59, 48, and 37.

concentric disc readout mechanism is somewhat more complex, and any additional complexity tends to degrade performance. The question is whether use of this mechanism would have a significant adverse effect on detented tuning accuracy or would pose problems with regard to certifying the tuning accuracy of receivers. More detailed and definite information is needed on these matters.

9. The foregoing discussion of the single and concentric disc mechanisms follows from the fact that they were discussed in the comments in Docket 20719. Comments are invited on any readout mechanism which will improve the legibility of the on-the-knob UHF channel displays. If requirements are eventually adopted, they will go to such matters as the size and spacing of UHF channel numbers and not to the specific method for achieving the desired results.

10. We ask that the comments submitted address the following questions:

(a) Can it be shown that UHF channel displays now in use have any material adverse effect on UHF channel viewing and thus relate to the purposes of the All Channel Receiver Law, 47 U.S.C. 303(s) and 330?

(b) Assuming adverse effect can be shown, how significant is it and does it justify the Commission's precluding use of a mode of channel display preferred by receiver manufacturers and apparently acceptable to the public?

(c) Would use of the two concentric disc system have any material effect on detented UHF tuning accuracy and, if so, how much effect and would it pose problems in certifying the tuning accuracy of receivers? Can design improvements limit or eliminate any such problems?

(d) What financial burden (redesign, retooling, etc.) would be involved in switching to use of an improved channel readout system such as the two concentric disc readout; more specifically, what would be the added cost to the manufacturer? To the consumer? How would this compare with the current and prospective cost of digital electronic tuning? (See para. 15 of the Report and Order in Docket No. 20719.)

(e) Considering design and tooling problems and the size of current inventories of tuning knobs, over what period of time could use of the two concentric disc channel display be phased in without waste and unnecessary financial burden?

(f) Over what period of time, and to what degree, is it expected that digital electronic tuning will replace current electromechanical tuning systems.

(g) In view of the length of time it will take to phase in an improved channel readout system for the electromechanical tuner (such as the two concentric disc channel display) and the anticipated imminence of the digital channel selection system, can the required use of an improved channel readout system for the electromechanical tuner be justified.

(h) Assuming use of the current mode of channel display is not precluded, what requirements might be reasonably imposed as to the size and spacing of the channel numbers?

11. Pursuant to procedures set out in § 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments in this proceeding on or before May 9, 1977 and reply comments on or before May 23, 1977. Comments and reply comments will be available for inspection at the Commission's Dockets Reference Room at its headquarters in Washington, D.C. All relevant and timely comments and reply comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into consideration other relevant information before it, in addition to the specific comments invited by this Notice. Formal participants shall file an original and 5 copies of their comments, reply comments and other materials. Participants wishing each Commissioner to have a personal copy may file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy.

FEDERAL COMMUNICATIONS  
COMMISSION,<sup>2</sup>  
VINCENT J. MULLINS,  
Secretary.

[FR Doc. 77-10406 Filed 4-7-77; 8:45 am]

[Docket No. 21184]

WAYNE J. FRANCO

Order Designating Application for Hearing  
on Stated Issues

Adopted: March 28, 1977.

Released: April 5, 1977.

In the matter of the application of Wayne J. Franco, 501 Grandview, Des Moines, Iowa 50313, Docket No. 21184, for renewal of license for Citizens Band Radio Station KEN-4198.

1. The Chief, Safety and Special Radio Services Bureau, having under consideration the application of Wayne J. Franco for renewal of license of station KEN-4198 in the Citizens Band Radio Service. The license for station KEN-4198 was issued on November 2, 1971, for a five-year term.

2. On September 1, 1972, a written Notice of Apparent Liability to Monetary Forfeiture for violation of Commission rules was mailed to the applicant, pursuant to section 510 of the Communications Act of 1934, as amended. That Notice stated that the applicant appeared to have incurred liability totalling \$300 for the wilful violation of § 95.95 (c)<sup>3</sup> (failure to identify), § 95.83(b) (at-

tempting to communicate with a station over a distance greater than 150 miles), § 95.41(d)(2) (interstation use of an intrastation frequency), and § 95.37(c)(2) (overheight antenna) of the Commission's rules. Those violations had been committed on June 21, 1972. Franco enclosed full payment of the forfeiture with his September 28, 1972, reply to the Notice of Apparent Liability.

3. In addition, on September 16, 1976, the applicant entered a plea of guilty in the United States District Court for the Southern District of Iowa to the charge that:

On or about the 20th day of August 1976, Wayne J. Franco, defendant, an individual, operating under a Citizen's Radio Service Class D license issued by the Federal Communications Commission, and subject to the regulations lawfully issued by said Federal Communications Commission, did operate a radio transmitter from the premises known as 501 Grandview, Des Moines, Iowa, in the Southern District of Iowa and, in the operation of said transmitter, operated the radio station with capabilities for transmissions on frequencies not assigned to the Class D Citizen's Radio Service, to-wit: 27.345 MHz, 27.405 MHz, and 27.475 MHz, in violation of 47 CFR 95.55(c)(4) and 47 U.S.C. Section 502.

4. In addition, Franco apparently operated a CB radio station again in wilful violation of the Commission's Rules on May 15, 16, and 18, 1975. In particular, it appears that CB radio station KEN-4198 was operated in wilful violation of the following sections of the Commission's rules:

(a) Section 95.41(d)(1).—Use of a radio frequency not authorized for the Citizens Band Radio Service.

(b) Section 95.41(d)(2).—Interstation communication on a frequency reserved for intrastation use.

(c) Section 95.44.—The station employed an external radio frequency power amplifier.

(d) Section 95.55(c)(4).—The station was equipped to operate on frequencies not assigned to the Citizens Band Radio Service without having a station license posted or a transmitter identification card attached to the transmitter indicating that operation on such frequencies had been authorized by the Commission.

(e) Section 95.55(e).—The station employed a transmitter having controls accessible from the exterior of the cabinet enclosing the transmitter which controls could cause operation in violation of the technical regulations applicable to the Citizens Band Radio Service.

(f) Section 95.83(a)(1).—Use of station as a hobby or diversion.

(g) Section 95.83(a)(5).—Use of station for communication with unlicensed station.

(h) Section 95.83(a)(13).—Use of station for transmission of communications relating to the technical performance, capabilities, or testing of radio equipment.

(i) Section 95.83(b).—Communicating, or attempting to communicate, over a distance of more than 150 miles.

(j) Section 95.83(b).—Communication with another CB radio station for a period exceeding five minutes.

(k) Section 95.91(b).—Failure to observe a five minute silent period between contacts.

(l) Section 95.95(c).—Failure to identify subject station and station with which in communication by assigned call signs at the beginning and end of each communication.

(m) Section 95.35(d).—User modification of the type accepted station transmitting equipment employed by the station

The above-mentioned violations of the Commission's rules on May 15, 16, and 18, 1975, were brought to the licensee's attention by an Official Notice of Violation mailed on June 6, 1975.

5. Furthermore, on May 15, 1975, Franco apparently identified his Citizens Band radio station "29W29" and on May 16, 1975, Franco apparently identified his Citizens Band radio station as "two nine W two nine" in lieu of its assigned call sign.

6. In view of the June 21, 1972, violations, the September 17, 1976, conviction for violation of 47 CFR 95.55(c)(4) and 47 U.S.C. Section 502, and the apparent wilful violations of the Commission's Rules on May 15, 16, and 18, 1975, it cannot be determined that a grant of Franco's application would serve the public interest, convenience, and necessity. Therefore, the Commission must designate the application for hearing.

7. Accordingly, it is ordered, Pursuant to sections 309(e) of the Communications Act of 1934, as amended, and §§ 1.973(b) and 0.331 of the Commission's rules, that the captioned renewal application is designated for hearing, at a time and place to be specified by subsequent Order, upon the following issues:

(a) To determine the effect of applicant's June 21, 1972, violations of Part 95 of the Commission's Rules and Regulations upon the applicant's requisite qualifications to be a licensee of the Commission.

(b) To determine the effect of Franco's September 17, 1976, conviction of the charge of violation of 47 U.S.C. 502 and 47 CFR 95.55(c)(4) in the United States District Court, Southern District of Iowa, upon the applicant's requisite qualifications to be a licensee of the Commission.

(c) To determine the facts and circumstances concerning the operation and condition of Citizens Band radio station KEN-4198 on May 15, 16, and 18, 1975.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the applicant has wilfully or repeatedly violated the Commission's rules.

(e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the applicant has the requisite qualifications to be a licensee of the Commission.

(f) To determine whether the public interest, convenience and necessity would be served by a grant of the application for a Citizens Band radio station license.

8. It is further ordered, That, to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall within 20 days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intent to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

GERALD M. ZUCKERMAN,  
Chief, Legal, Advisory and  
Enforcement Division.

[FR Doc. 77-10408 Filed 4-7-77; 8:45 am]

<sup>2</sup> Commissioners Wiley, Chairman; and White concurring in the result.

<sup>3</sup> Certain Sections of Part 95 of the Commission's Rules have been revised, renumbered, or deleted. The Sections referred to herein are those in effect at the time of operation.

**FEDERAL ENERGY  
ADMINISTRATION**

**CASES FILED WITH THE OFFICE OF  
EXCEPTIONS AND APPEALS**

**Week of March 18 Through March 25, 1977**

Notice is hereby given that during the week of March 18 through March 25, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who

will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

Eric J. Fygi,  
Acting General Counsel.

APRIL 1, 1977.

APPENDIX.—List of cases received by the Office of Exceptions and Appeals, week of Mar. 18 through Mar. 25, 1977

Date	Name and location of applicant	Case No.	Type of submission
Mar. 17, 1977	American Can Co., Greenwich, Conn. (If granted: American Can Co. would not be included as one of the 50 most energy-consuming corporations within SIC code 28 and the firm would be exempted from the sec. 375(a) requirement that it report its progress in improving energy efficiency to the FEA.)	FEA-1232	Appeal of FEA notice at 41 FR 54977 Dec. 16, 1976.
Do.	Crane Co., New York, N.Y. (If granted: Crane Co. would not be included as one of the 50 most energy-consuming corporations within SIC code 33 and the firm would be exempted from the sec. 375(a) requirement that it report its progress in improving energy efficiency to the FEA.)	FEA-1233	Appeal of FEA notice at 41 FR 54977 (Dec. 16, 1976).
Mar. 18, 1977	Boston Gas Co., Washington, D.C. (If granted: Boston Gas Co. would receive an extension of the relief granted by the FEA regional office in Boston, Mass. on Mar. 8, 1974.)	FXE-3067	Extension of exception relief granted in Boston Gas Co., 5 FEA par. (Feb. 16, 1976).
Do.	Continental Oil Co., Houston, Tex. (If granted: Continental Oil Co. would be permitted to allocate certain increased costs of crude oil to covered products received by Continental in product exchanges for purposes of calculating the maximum allowable prices for such covered products.)	FEE-3068	Price exception (sec. 212.83).
Do.	Doric Petroleum, Inc., Washington, D.C. (If granted: Doric Petroleum, Inc. would receive an extension of the relief granted in the FEA's Nov. 5, 1976, decision and order to permit Doric to increase its prices to reflect non-product cost increases in excess of \$0.003/gal for natural gas liquid products produced at its Hennessey and Newcastle gas plants.)	FXE-4011 FXE-4012	Extension of the relief granted in Doric Petroleum, Inc., 4 FEA par. (Nov. 5, 1976).
Do.	Gary Western Co., Inglewood, Colo. (If granted: Gary Western Co. would be granted a temporary stay of the provisions of sec. 212.83 pending a final determination of an exception application which it intends to file.)	FST-0037	Request for temporary stay.
Do.	Little America Refining Co., Washington, D.C. (If granted: Little America Refining Co. would receive an exception to permit the firm to use the alternative accounting cost valuation set forth in sec. 212.83(c)(2)(iii) in pricing motor gasoline and diesel fuel.)	FEE-3999	Price exception (sec. 212.83).
Mar. 21, 1977	Crawford's Service Center, Bloomsburg, Pa. (If granted: Crawford's Service Center would be supplied motor gasoline by Lehigh Oil Co. rather than its base period supplier, Tri-County Oil Co.)	FEE-4019	Exception to change suppliers (sec. 211.9).
Do.	Edwin L. Cox, Dallas, Tex. (If granted: Crude oil produced from the Seward LeFevre lease located in Jeff Davis Parish, La., would be sold at upper tier ceiling prices.)	FEE-4014	Price exception (sec. 212.73).
Do.	Intercoastal Operating Co., Austin, Tex. (If granted: Crude oil produced from the J. R. Rosson lease located in San Patricio County, Tex., would be sold at upper tier ceiling prices.)	FEE-4013	Do.
Do.	Louis Kahan, Tulsa, Okla. (If granted: Crude oil produced from the Mose Bean lease located in Beaufort County, Okla., would be sold at upper tier ceiling prices.)	FEE-4000	Price exception (sec. 212.74).
Do.	Luke Brothers, Inc., Calera, Okla. (If granted: Luke Brothers, Inc., would receive a stay of the refund requirements of the remedial order issued to the firm by FEA region VI on Oct. 5, 1976, pending judicial review.)	FES-0083	Stay of the remedial order issued by region VI on Oct. 5, 1976.
Do.	Placid Oil Co., Dallas, Tex. (If granted: Placid Oil Co. would be permitted to increase its prices to reflect non-product cost increases in excess of \$0.005/gal for natural gas liquid products produced at its Black Lake, Calumet, Lapeyrouse, Lake Washington, Lirette, Patterson, Franice, Promix, Womack Hill, and Yelcoskey gas plants.)	FEE-4001 FEE-4010	Price exception (sec. 212.165).
Do.	Robbins, Ernest C., Bloomsburg, Pa. (If granted: Mr. Ernest C. Robbins would be supplied motor gasoline by Lehigh Oil Co. rather than its base period supplier, Tri-County Oil Co.)	FEE-4018	Exception to change suppliers (sec. 211.9).
Do.	Superior Oil Co., Houston, Tex. (If granted: Superior Oil Co. would be permitted to increase its prices to reflect non-product cost increases in excess of \$0.005/gal for natural gas liquid products produced at its Lowry gas plant.)	FEE-4020	Price exception (sec. 212.165).
Do.	Walt's Exxon, Bloomsburg, Pa. (If granted: Walt's Exxon would be supplied motor gasoline by Lehigh Oil Co. rather than its base period supplier, Tri-County Oil Co.)	FEE-4017	Exception to change suppliers (sec. 211.9).
Do.	West End Service Station, Bloomsburg, Pa. (If granted: West End Service Station would be supplied motor gasoline by Lehigh Oil Co. rather than its base period supplier, Tri-County Oil Co.)	FEE-4016	Do.
Do.	Yogle's Exxon, Bloomsburg, Pa. (If granted: Yogle's Exxon would be supplied motor gasoline by Lehigh Oil Co. rather than its base period supplier, Tri-County Oil Co.)	FEE-4105	Do.

Date	Name and location of applicant	Case No.	Type of submission	Certificate No.	Owner/Operator and Vessels
Mar. 29, 1977	Colonial Oil Co., Jacksonville, Fla. (If granted: Colonial Oil Co. would receive an extension of the relief granted in FEA's Nov. 30, 1976, decision and order which would permit the firm to be assigned a new, lower priced supplier of motor gasoline to replace its base period supplier, American Petroleum, Inc.)	FXE-4022	Extension of the relief granted in Colonial Oil Co., 4 FEA par. 83,213 (Nov. 30, 1976).	02286	China Union Lines, Ltd.: <i>Keelung Victory</i> .
Do.	Gary Western Co., Ingwood, Colo. (If granted: Gary Western Co. would receive a stay of the provisions of sec. 212.83 pending a final determination of an exception application which it intends to file.)	FES-4023	Stay of the requirements of 10 CFR 212.83(c)(2)(III) (E).	02429	G. & C. Towing Inc.: <i>Walter G. Hougland</i> .
Do.	Getty Oil Co., New York, N.Y. (If granted: FEA's Mar. 16, 1977, decision and order would be rescinded.)	FMR-0006	Modification/rescission of FEA's decision and order in Getty Oil Co., 5 FEA par. (Mar. 16, 1977).	02496	Chevron Oil Co.: <i>S-81, Chevron-31, S-54, Chevron-33, S-94, S-55, S-93, No. 28, No. 17, Chevron-32, S-53, BGG-100, S-87, S-92, MCN No. 3</i> .
Do.	Grier Oil Co., Aberdeen, Md. (If granted: Relief granted in the FEA's Mar. 8, 1977, decision and order would be rescinded.)	FEX-0134	Supplemental order to FEA's decision and order in Grier Oil Co., 5 FEA par. (Mar. 8, 1977).	02501	Standard Oil Co. of California: <i>Alaska Standard, Standard Mississippi, Chevron, Washington, Chevron Oregon, S.O. Co. No. 18, Chevron Hawaii, Chevron Oiler, S.O. Co. No. 17, Chevron California, Hulley Brown, J. H. Tuttle, Chevron Colorado, Idaho Standard, Nevada Standard, J. L. Hanna, Chevron Tongass, S. O. Co. No. 7</i> .
Do.	Power Test Corp., Westbury, N.Y. (If granted: Power Test Corp. would be permitted to import 4,552 bbl/d of finished products into districts I-IV on a fee-free basis during the allocation period May 1, 1977, through Apr. 30, 1978.)	FPI-0111	Exception from the base fee requirements (sec. 213.35).	02582	Jugoslavenska Tankerska Plovidba Oour Jugotanker: <i>Idrija</i> .
Do.	Sun Co., Inc., Philadelphia, Pa. (If granted: Relief granted in FEA's Feb. 25, 1977, decision and order would be modified.)	FMR-0094	Modification of the relief granted in Amtel Inc., 5 FEA par. (Feb. 25, 1977).	02635	Atlas Petroleum Transport Co., Ltd.: <i>Adoration</i> .
Do.	Villarreal Butane Co., Austin, Tex. (If granted: Remedial order issued by region VI on Feb. 8, 1977, would be rescinded and Villarreal Butane Co. would not be required to refund overcharges made in its propane sales.)	FRA-1234	Appeal of the remedial order issued by region VI on Feb. 8, 1977.	02834	Transportes Fruterios del Mediterraneo S.A.: <i>Bayren</i> .
Mar. 24, 1977	Hugco-Lewis Petroleum Co., Long Beach, Calif. (If granted: Crude oil produced from the El Segundo No. 2 well located in Los Angeles County, Calif., would be sold at upper tier ceiling prices.)	FEE-4024	Price exception (sec. 212.70).	02917	Scherkate Sahami Keschtirani Mell Arya: <i>Arya Gol</i> .
Do.	Hoeker Oil Co., Salem, Mo. (If granted: Hoeker Oil Co. would receive an increase in its adjusted base period use of motor gasoline.)	FEE-4027	Allocation exception (sec. 211.13(e)).	02975	Venture Shipping (Managers) Ltd.: <i>Fortune Venture</i> .
Do.	Mobridge Gas Co., Mobridge, S. Dak. (If granted: FEA's decision and order issued to Mobridge Gas Co. on Feb. 8, 1977, would be rescinded.)	FKX-0135	Supplemental to FEA's decision and order in Mobridge Gas Co., 5 FEA par. (Feb. 8, 1977).	03137	Cunard Steam-Ship Co. Ltd.: <i>Lumen</i> .
Do.	New York Transit Authority, Brooklyn, N.Y. (If granted: FEA's Mar. 3, 1977, information request denial would be rescinded and the New York Transit Authority would receive access to FEA documents concerning a notice of probable violation issued to Amoco.)	FFA-1235	Appeal of the FEA's information request denial dated Mar. 3, 1977.	03138	Cunard Line Ltd.: <i>Cunard Adventurer</i> .
Do.	Phillips Petroleum Co., Bartlesville, Okla. (If granted: Phillips Petroleum Co. would be permitted to increase its prices to reflect nonproduct cost increases in excess of \$0.05/gal for natural gas liquid products produced at its Goldsmith and Lusk gas plants.)	FEE-4025 FEE-4026	Price exception (sec. 212.105).	03139	Offshore Marine Ltd.: <i>Polar Shore</i> .
Do.	Rock Island Refining Corp., Indianapolis, Ind. (If granted: FEA would review the entitlements exception relief granted to Rock Island Refining Corp. during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0138	Review of entitlements exception relief.	03205	Armadores Maribella S.A.: <i>Maribella III</i> .
Do.	Shell Oil Co. (Tippet), Houston, Tex. (If granted: FEA's Mar. 11, 1977, decision and order would be rescinded and the Shell Oil Co., would be permitted to increase its prices to reflect nonproduct cost increases in excess of \$0.05/gal for natural gas liquid products produced at the Tippet plant.)	FXA-1236	Appeal of decision and order in Shell Oil Co., 5 FEA par. (Mar. 11, 1977).	03319	Transocean Transport Corp.: <i>Lustrous, Transocean Merchant</i> .
Do.	Texaco, Inc., Atlanta, Ga. (If granted: Texaco, Inc., would be relieved of its base period supply obligation to furnish motor gasoline to F. E. (Jack) Glover, Inc.)	FEE-2956	Exception to terminate base period supplier/purchaser relationship (Sec. 211.9).	03395	A/S Oljefart II and Skibs Motortank: <i>Harry Borthen</i> .

[FR Doc. 77-10245 Filed 4-4-77; 10-38 am]

## FEDERAL MARITIME COMMISSION

## CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to 46 CFR Part 542 and Section 311(p) (1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/Operator and Vessels
01023	Lovenskiold Og Hoyers Rederi: <i>Fossum</i> .
01057	Schluskel Reederei KG (G.M.B.H. & Co.): <i>Wienertor</i> .
01074	Sigval Bergesen: <i>Nordjonn</i> .
01304	Furness Withy & Co. Ltd.: <i>Furness Bridge</i> .
01841	John I. Jacobs & Co. Ltd.: <i>Hollywood</i> .

## Certificate

Certificate No.	Owner/Operator and Vessels
01428	Ocean Transport & Trading Ltd.: <i>Atrous, Laomedon, Eumaeus, Adrastus, Glenlyon, Machaon, Glenogle, Protesilaus, Stentor, Rhesenor</i> .
01639	Marencanto Compania Naviera S.A.: <i>Promachos</i> .
01818	Houston Line Ltd.: <i>Cian Ranald</i> .
01819	King Line Ltd.: <i>Cian Grant, Clan MacGregor, Clan MacGillivray, Clan Graham</i> .
01966	Estrella Prospera Nav. S.A. of Panama: <i>Fearless Colocotronis</i> .
02129	Ore Carriers Ltd.: <i>Joya McCane</i> .
02194	Compagnie Generale Maritime: <i>Pointe du Van, France, Hornbelt</i> .
02198	The Peninsular & Oriental Steam Navigation Co.: <i>Ardshiel</i> .
02205	Compagnia Armatoriale Italiana: <i>Melide</i> .
02332	Pacific Oil Carriers Corp.: <i>Evanthia</i> .
04794	Sea King Corp.: <i>Gran Integrity</i> .
04839	Augusta Shipping Corp.: <i>Cuba-hama</i> .
05091	Dansk Esso A/S: <i>Esso Stockholm</i> .
05425	Georgia Transporters Inc.: <i>GT 120</i> .
05437	The Dow Chemical Co.: <i>TCB 312</i> .
05530	Consolidated Towing Co.: <i>Celissa Ann</i> .
05559	Maryland Shipbuilding & Drydock Co.: <i>Valerie F.</i>
05817	Maritima del Norte, S.A.: <i>Sierra Madre</i> .
05893	Eplia Compania Naviera, S.A.: <i>Eplia</i> .
06166	Hobart-Trotter Towing Inc.: <i>Martha Trotter</i> .
06251	Denizcilik Anonim Sirketi: <i>Ata</i> .
06472	Tahelyo Kisen Kalsha, Ltd.: <i>Waryu Maru</i> .
07091	Atlantor Navigation Ltd.: <i>Eugenia K. Chimples</i> .
07258	Kee Yeh Navigation (Panama) Corp., S.A.: <i>Kee Lee</i> .

Certificate No.	Owner/Operator and Vessels	Certificate No.	Owner/Operator and Vessels	Certificate No.	Owner/Operator and Vessels
07271	Sasaki Junzo: <i>Mitomaru No. 82</i> .	01857	OHG I FA Bernhard Schulte: <i>Bernhard Schulte</i> .	05579	Black Sea Shipping Co.: <i>Ion Soltyk, Kareliya</i> .
07519	Mares Nortenos Armadora S.A.: <i>Tanganyika</i> .	01890	A/S Billabong: <i>Star Dover</i> .	05581	Latvian Shipping Co.: <i>Adler, Petr Stuehka, Preiis, Valmiera</i> .
07733	Ocean Traller Transport Corp.: <i>Siboney</i> .	01908	The Union-Castle Mail Steamship Co., Ltd.: <i>Kinpurnie Castle, Winchester Castle, Balmoral Castle</i> .	05670	Vasco Madriena de Navegacion S.A.: <i>Valle de Usua</i> .
07768	Omni Shipping S.A.: <i>Northern Front, Northern Ice</i> .	02151	Anchor Line, Ltd.: <i>Calabria</i> .	05704	Murmanak Shipping Co.: <i>Kapitan Khromtsov</i> .
07895	Western Oil Carriers Ltd.: <i>Grand West</i> .	02194	Compagnie Generale Maritime: <i>Jacques Cartier, Atlantic Cognac, Fort la Reine, Fort Pontchartrain, Auvergne, Anjou, Pointe Allegre, Magellan, Mississippi, Suffren, Rochambeau, Louisiane, Fort Josephine, Fort Trinite, Audrac, Carbet, Carimare, Barracuda</i> .	05736	Flota Cubana de Pesca: <i>Bio Habana</i> .
08002	Marcona Ocean Products, Ltd.: <i>Allen Judith, Booster Barge</i> .	02259	Neste Oy: <i>Purha, Palva, Terri</i> .	05810	John Hudson Fuel & Shipping Ltd.: <i>Castle Point</i> .
08071	Anglo Nordic Bulkships (Management) Ltd.: <i>Nordic Rover</i> .	02330	Taiwan Marine Corp.: <i>Globtik Saturn, Zenlin Glory, Shinkyo, Silverdolphin, Shinsho, Regent Li-lac, Eastern Honour, Eastern Anna</i> .	06130	Northern Shipping Co.: <i>Pioneer Onegi</i> .
08079	IRS Transportation Co.: <i>IRS 104, RV 10, ETT 108, IRS 103, IRS 102, IRS 101</i> .	02518	Consortium Europeen de Transports Maritimes: <i>Cetra Cassiopea</i> .	06248	Commercial Corp. "Sovrybflot" <i>Ludmila Pavlichenko</i> .
08143	Luna I Compania Naviera S.A. Panama: <i>Navarchos Miaoulis</i> .	02239	Compagnia Marittima Carlo Camelli: <i>Cervara</i> .	02996	Akita Senpaku K.K.: <i>Akitsuiki Maru</i> .
08195	Blanco Cargo Carriers Ltd.: <i>Hampton Bay</i> .	02259	Neste Oy: <i>Purha, Palva, Terri</i> .	07151	Sea Containers Chartering, Ltd.: <i>Merzario Etruria, Merzario Sardinia, Merzario Liguria, Merzario Sicilia</i> .
08272	Kados Shipping Co. Ltd.: <i>Ivory Sun</i> .	02330	Taiwan Marine Corp.: <i>Globtik Saturn, Zenlin Glory, Shinkyo, Silverdolphin, Shinsho, Regent Li-lac, Eastern Honour, Eastern Anna</i> .	07511	Paramount Traders Corp.: <i>Star Victoria</i> .
08298	York Navigation Corp.: <i>Grand York</i> .	02518	Consortium Europeen de Transports Maritimes: <i>Cetra Cassiopea</i> .	07574	Georgian Shipping Co.: <i>Komandarm Fedko</i> .
08748	Valor Navigation S.A.: <i>Grand Unity</i> .	02734	Italia Societa per Azioni di Navigazione: <i>Gherenuk</i> .	07663	Molave Bulk Carriers, Inc.: <i>La Carlota</i> .
08677	St. Charles Transportation Co. Ltd.: <i>Atlantic</i> .	02961	Kobe Kisen Kabushiki Kaisha: <i>Muneshima Maru</i> .	07724	Pure Bulk Carriers Corp.: <i>Star Poukou</i> .
08981	Champion Bay Shipping Co. Ltd.: <i>Rio de Janeiro</i> .	02976	Arthur-Smith Corp.: <i>TCB-302, IRS 101, IRS 104</i> .	07880	Logicon, Inc.: <i>Sinclair 7</i> .
09053	Farpesca, S.A.: <i>Farpesca Cuarto</i> .	03216	Salenrederierna AB: <i>Delphic Wasa</i> .	08175	Gunther Schulz Schulaer Schiffahrtskontor: <i>Aland</i> .
09159	Sequoia Corp.: <i>Echo Lake</i> .	03391	Societe Maritime Shell: <i>Batillus, Bellamya</i> .	08458	Vroon B.V. (Handels-en Scheepvaart Ond.): <i>Shorthorn Express</i> .
09288	Frio Shipping Co. Ltd.: <i>Cabo Frio</i> .	03453	Kyosei Kisen Kabushiki Kaisha: <i>Seicho Maru</i> .	08530	Prompt Shipping Corp., Ltd.: <i>Bali Career</i> .
09582	Citation Carriers, Inc.: <i>Eastern Oak</i> .	03524	Towa Kisen Kabushiki Kaisha: <i>Seiyu Maru</i> .	08583	Two Rivers Finance Corp.: <i>Nassau</i> .
09692	Multitank Westfalla Tankreederel Ahrenkiel G.m.b.H. & Co. K.G. Hamburg: <i>Multitank Westfalla</i> .	03640	Pan Ocean Bulk Carriers, Ltd.: <i>Ocean Ace, Ocean Beauty, Bum II</i> .	08823	Conoco Shipping Co.: <i>Conoco Texas</i> .
09834	Societe des Chalandes de la Mediterranee S.A.: <i>Samarinda</i> .	03727	Continental Oil Co.: <i>7001, 7002</i> .	08868	Weathers Towing, Inc.: <i>Martha Trotter</i> .
09846	Silver Bay Shipping Co. S.A. of Panama: <i>Aristaios</i> .	03752	Kingcome Navigation Co., Ltd.: <i>Halda Transporter</i> .	09003	VTG Vereinigte Tanklager und Transportmittel G.M.B.H.: <i>Elernator, Westertor</i> .
10896	Dasonab Compania Naviera S.A.: <i>Naseer</i> .	03790	Alkes Shipping Corp.: <i>Bariloche</i> .	09024	Veb Fischkombinat Rostock: <i>Herbert Baum</i> .
11434	Transocean Seaways Corp.: <i>Pinguino</i> .	03884	Northatlantic Corp.: <i>Hawk</i> .	09031	Union Mechling Corp.: <i>Star Diamond</i> .
11568	Pescapuerta, S.A.: <i>Pescapuerta Segundo</i> .	03971	Korea Shipping Corp.: <i>Korean Runner</i> .	09243	Calabria Shipping Co.: <i>Sifia</i> .
11966	Goshi Gaisha Maruhyo Shoten: <i>Fukuchou Maru No. 11</i> .	04080	Port Arthur Towing Co.: <i>MM 101, MM 102</i> .	09301	Scott Chotin, Inc.: <i>SC 303 L, SC 304 X, SC 151 X, SC 305 S</i> .
12096	Navios Corp.: <i>Cartiercliff Hall, Montcliff Hall, Steelcliff Hall</i> .	04226	National Marine Service Inc.: <i>N.M.S. No. 1459, N.M.S. No. 1460</i> .	09345	Hiong Guan Navigacion Co., Ltd.: <i>Nusantara IV</i> .
12132	Crown Shipping Co., S.A.: <i>Crown Pearl</i> .	04358	Holland Bulk Transport B.V.: <i>Mare Novum, Mare Magnum</i> .	09389	Triangle Shifting & Fleeting Service, Inc.: <i>Jayne Hougland, TC-17</i> .

By the Commission.

JOSEPH C. POLKING,  
Secretary.

[FR Doc.77-10443 Filed 4-7-77; 8:45 am]

CERTIFICATES OF FINANCIAL  
RESPONSIBILITY (OIL POLLUTION)

## Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by Section 311(p) (1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels
01196	Vaboens Rederi A/S: <i>Hervang</i> .
01449	The Cairn Line of Steamships Ltd.: <i>Cairnoak</i> .
01641	The Bank Line Ltd.: <i>Streambank</i> .
01708	Benedict Shipping Corp.: <i>Angel, Rigel, Wotan, Leros</i> .

## Certificate

Certificate No.	Owner/Operator and Vessels
12188	Moreton Co., Ltd.: <i>World Endeavour</i> .
12192	East Coast Salvage Co., Inc.: <i>Rig No. 2</i> .
12203	Executive Maritima S.A.: <i>Kyriacos A.S.</i>
12214	Copemar S.A.: <i>Campa de Torres</i> .
12250	Dellan Artemis Cruises, Inc.: <i>Danac</i> .
12257	Omega Maritime & Navigation, Inc.: <i>Morning Glory</i> .
12259	Dannebrog Rederi A.S.: <i>Frederiksborg, Fredensborg, Brattingsborg, Billaborg, Claasonsborg, Nordborg</i> .
12263	Hsing Mou Fishery Co. Ltd.: <i>Shin Hong Mou No. 52</i> .
12266	Atlantic International Navigation Corp.: <i>Centurion Bulker</i> .
12267	Baltic Navigation Corp., Ltd.: <i>Agg's Baltic</i> .
12270	Partrederiet for T/T Sea Song: <i>Sea Song</i> .
12281	C.Y.S. Tanker Transport, Inc.: <i>Energy Mobility</i> .
12282	Nikko Enyo Gyogyo Kabushiki Kaisha: <i>Nikko Maru No. 51</i> .
12283	Junzo Sasaki: <i>Mitomaru No. 8</i> .
12288	Tsubata Sengyo K.K.: <i>Takusei Maru 25, Takusei Maru No. 31, Takusei Maru No. 33</i> .
12289	Taisei Gyogyo Kabushiki Kaisha: <i>Taiseimaru No. 58, Taiseimaru No. 68</i> .
12291	Tilsamar Inc.: <i>Paros</i> .
12292	St. Christopher Maritime, Inc.: <i>St. Christopher</i> .
12294	Libramar Shipping Co. Ltd.: <i>Northern Ice</i> .
12295	United Overseas Petroleum Carriers Inc.: <i>Energy Determination</i> .
12297	Sea Wind Shipping and Financing Co. S.A.: <i>Alexandra</i> .
12299	Cheh an Navigation Co. S.A.: <i>Glory Reliance</i> .
12301	Alice Ocean (Panama) S.A.: <i>Alice I</i> .
12307	Aksjeselskapet Jagarda: <i>Jagarda</i> .
12308	Golar Gas Tankers, Inc.: <i>Gimi</i> .
12310	Deep Sea Rig Trading Ltd.: <i>Hamilton Piper</i> .
12311	Partrederiet for Merch Continental V/Shipowners per Henriksen: <i>Merc Continental</i> .
12312	Paros Trade and Transport, Ltd.: <i>Paros Trader</i> .
12318	Shinichiro Kanari: <i>Teisho Maru No. 18</i> .
12319	Toshio Takiguchi: <i>Yoshi Maru No. 55</i> .
12320	Yoshio Nagashima: <i>Bishamon Maru</i> .
12321	Yugen Kaisha Honzo Shoten: <i>Ryofuku Maru No. 15</i> .
12322	Yamada Suisan Kogyo Kabushiki Kaisha: <i>Hoken Maru No. 38</i> .
12323	Onahama Gyogyo Kyodo Kumiai: <i>Kyowa Maru No. 11, Kyowa Maru No. 15</i> .
12324	Ishigaki Gyogyo Kabushiki Kaisha: <i>Sanwa Maru No. 3</i> .
12325	Marue Suisan Kabushiki Kaisha: <i>Fukuho Maru No. 8, Fukuho Maru No. 18</i> .

By the Commission.

JOSEPH C. POLKING,  
Acting Secretary.

[FR Doc.77-10444 Filed 4-7-77; 8:45 am]

[Independent Ocean Freight Forwarder  
License No. 450]

## IRA FURMAN &amp; CO., INC.

## Order of Revocation

By letter dated March 1, 1977, Mr. Richard L. Furman, Ira Furman & Company, Inc., 120-65 168th Street, Jamaica, New York 11434, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 450 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before March 30, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Ira Furman & Company, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) Section 5.01 (c) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 450 issued to Ira Furman & Company, Inc. be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 450 be and is hereby revoked effective March 30, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Ira Furman & Company, Inc.

LEROY F. FULLER,  
Director, Bureau of  
Certification and Licensing.

[FR Doc.77-10445 Filed 4-7-77; 8:45 am]

## FEDERAL POWER COMMISSION

[Docket No. CS71-704]

## BEREN CORP.

## Petition

APRIL 4, 1977.

Take notice that Beren Corporation (Beren), 970 Fourth Financial Center, Wichita, Kansas 67202, filed a petition for waiver of § 157.40(c) of the Commission's Regulations of Practice and Procedure. Beren requests waiver of § 157.40(c) to authorize Beren to sell, under its small producer certificate issued in Docket No. CS71-704, natural gas to Cities Service Gas Company (Cities Service) from developed reserves underlying four wells in the Hardtner Field, Barber County, Kansas, which Beren acquired from two large producers.

By assignment effective November 1, 1971, Beren acquired Amerada Hess Corporation's interest in three wells in

the Hardtner Field, Barber County, Kansas; the Sterling No. 1, the Johnson No. 1, and the Rathgeber No. 1. Prior to this assignment, Amerada Hess sold the gas produced to Cities Service under a contract dated October 7, 1955, on file as Amerada Hess FPC Gas Rate Schedule No. 43, and pursuant to a certificate of public convenience and necessity issued in Docket No. G-9488. The contract expired by its own terms on December 4, 1975. On December 7, 1976, Beren and Cities Service executed a replacement contract, providing for a current base price of 53 cents per Mcf, subject to adjustment for Btu content and tax reimbursement. The contract also contains an "area/national rate" adjustment clause. Sales from the Sterling Well currently average approximately 96 Mcf per day; from the Johnson Well, 46 Mcf per day, and from the Rathgeber Well, 99 Mcf per day.

By assignment effective July 1, 1975, Beren acquired Sun Oil Company's interest in the DNM Grain No. 1 Well, Hardtner Field, Barber County, Kansas. Prior to this assignment, Sun sold the gas produced to Cities Service under a contract dated August 30, 1955, on file as Sun FPC Gas Rate Schedule No. 69, and pursuant to a certificate of public convenience and necessity issued in Docket No. G-20065. This contract expired by its own terms on December 1, 1975. On August 28, 1976, Beren and Cities Service executed a replacement contract containing pricing provisions identical to the 1976 contract covering sales from the Sterling, Johnson, and Rathgeber Wells. Sales from the DNM Grain Well currently average approximately 83 Mcf per day.

Beren submits that because there is only a small amount of production from each of the four wells involved, and there will be no rate impact as a result of the waiver because Beren will continue sales to Cities Service at the just and reasonable nationwide rate for gas sales made by large producers, Section 157.40(c) of the Commission's Regulations should be waived.

Any person desiring to be heard or to make any protest with reference to said petition should on or before April 21, 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 party 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.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10416 Filed 4-7-77; 8:45 am]

[Docket No. RP77-50]

**CITY OF TALLAHASSEE FLORIDA GAS TRANSMISSION CORP.**

**Order Establishing Procedures for Resolution of Data Classification Problems in Preparation of FPC Form 69**

APRIL 4, 1977.

Form 69 was instituted by Commission Order No. 531 in Docket No. R-472 on June 25, 1975. In that order the Commission resolved that this form is required in order to determine the extent to which alternate fuels may be utilized to meet the requirements of those end-use customers who will not be able to continue to satisfy their energy needs with natural gas due to the imposition of increasing levels of curtailment upon such customers by interstate pipeline companies or foreign supplies of natural gas.

The information contained in Form 69 is used by the Commission<sup>1</sup> in meeting its responsibilities under the Natural Gas Act where it has a mandate to require that those pipeline companies subject to its jurisdiction adopt curtailment plans that are in the national and public interest.<sup>2</sup>

The Commission requires this information in support of its continuing endeavor to develop curtailment plans for interstate pipelines and their customers that are required and in the public interest and to determine both in specific cases and on a general basis how to minimize the harmful impact that the gas supply deficiency may have on the various sectors of the national industrial complex. Both this Commission and the FEA require this information in order to fulfill the important statutory obligations with which they are charged.

It has come to the attention of this Commission that a misunderstanding has arisen between Florida Gas Transmission Company (Florida Gas) and the City of Tallahassee, Florida (Tallahassee) concerning the percentage of alternate fuels used to offset curtailments of natural gas at the Wakulla delivery point. The Form 69 Schedule 1 filed by Florida Gas shows a Code 30, meaning the gas is not required to be offset by other fuels. Tallahassee informed the FPC thru letters that Florida Gas should

<sup>1</sup> Form 69 was developed in cooperation with the Federal Energy Administration (FEA) and the National Association of Regulatory Utility Commissioners. It is intended to provide information on the alternate fuel needs of direct end-users due to natural gas curtailments. Most sales to direct end-users are made by companies not subject to FPC jurisdiction. Hence, the FEA in its counterpart form collects similar information from such nonjurisdictional companies on its Form G101 series. The Form 69 information collected by the FPC from jurisdictional companies is sent to FEA which processes and computerizes all the information from virtually all the gas distributors and pipeline companies in the country. The FPC and the FEA need this information to determine the impact of natural gas curtailments.

<sup>2</sup> *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972).

have used Code 25, which indicates substantial quantities of purchased electricity are made to offset natural gas curtailment. Florida Gas shows in its Form 69 no purchases of electricity being made by Tallahassee to offset the natural gas curtailments reported.

In order to resolve this confusion we shall convene a conference where representatives of Florida Gas and Tallahassee can present their points of view to members of the Commission Staff and representatives of the FEA. We specifically invite those members of the FEA who use this form on a routine basis to participate in this conference. It is our hope that this matter can be resolved amicably to the satisfaction of those who prepare the forms and the governmental agencies which use the forms. We shall order the FPC staff to prepare a report at the conclusion of the conference stating the resolution reached by the parties. In the event this matter cannot be resolved informally we shall reserve the right to convene a formal hearing on this matter.

The Commission finds: Good cause exists to convene an informal conference to resolve the data classification problems which have arisen between Florida Gas and Tallahassee.

The Commission orders: On April 15, 1977, at 10 a.m. an informal conference will be convened of all interested persons including representatives of Florida Gas, Tallahassee, FEA and the FPC Staff, for the purpose of explaining, clarifying and resolving those problems encountered in the preparation of FPC Form No. 69.

The conference will be held in a meeting room at the office of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C.

All interested persons are invited to attend, but attendance will not be deemed to authorize intervention as a party in this proceeding.

By the Commission.

KENNETH F. PLUMB,  
Secretary.

[FR Doc.77-10426 Filed 4-7-77;8:45 am]

[Docket No. ER77-267]

**KANSAS GAS & ELECTRIC CO.  
Changes in Tariff**

APRIL 4, 1977.

Take notice that Kansas Gas and Electric Company on March 28, 1977 tendered for filing proposed changes in its Federal Power Commission Electric Service Tariff No. 93.

Kansas Gas and Electric Company states that the filing is Service Schedule L, Interim Power Service which provides electric power and accompanying energy to be supplied June 1, 1977 through May 31, 1978 to the Kansas Power and Light Company as a result of the installation of a specific 630 mw steam electric generating unit identified as La Cygne Unit No. 2. Kansas Gas and Electric indicates that it desires to sell 12 mw of

capacity to the Kansas Power and Light Company to reduce its excess reserves.

Copies of the filing were served upon the Kansas Power and Light Company and the Utilities Division of the State Corporation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with paragraph 1.8 and 1.10 of the Commission's Rules and Practice of Procedure (18 CFR 1.8, 1.10). Such petitions or protests should be filed on or before April 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10419 Filed 4-7-77;8:45 am]

[Docket No. CS77-79]

**D. B. McCLINTON  
Petition**

APRIL 4, 1977.

Take notice that D. B. McClinton (Applicant), P.O. Box 97, Livonia, Louisiana 70755, filed a petition for waiver of Section 157.40(c) of the Commission's Regulations of Practice and Procedure. Applicant requests waiver of Section 157.40(c) to permit sales under his successor application pursuant to his small producer certificate in Docket No. CS77-79 to the extent the ceiling price is applicable to comparable sales by large producers.

On November 15, 1976, Applicant filed an application for a small producer certificate in Docket No. CS77-79. A successor application was also filed on behalf of D. B. McClinton, Operator, et al., as the purchaser of the interest of Chevron Oil Company, et al., in the St. Martinville Field of St. Martin Parish, Louisiana, which was assigned Docket No. CI77-113.

By amendment dated December 1, 1976, between United Gas Pipeline Company and Applicant, Applicant states its willingness to continue sales at the contract rate or the applicable ceiling rate established by the Commission for comparable sales by large producers.

Any person desiring to be heard or to make any protest with reference to said petition should on or before April 21, 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 party 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.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc. 77-10418 Filed 4-7-77; 8:45 am]

[Docket No. RP77-85]

**SENATOR HOWARD METZENBAUM (COMPLAINANT) v. COLUMBIA GAS TRANSMISSION CORPORATION (DEFENDANT)**

Order Instituting Investigation and Hearing Prescribing Procedures, and Granting Interventions

MARCH 31, 1977.

On February 11, 1977, United States Senator Howard M. Metzenbaum filed a letter requesting that this Commission order Columbia Gas Transmission Corporation (Columbia) to show cause why it should be permitted to pass on to its customers the additional cost incurred by reason of Columbia's alleged errors in judgment resulting in purchases of expensive emergency gas supplies during the past winter. Senator Metzenbaum's letter was treated as a complaint by the Commission and was immediately forwarded by the Commission's Secretary to Columbia for response within 15 days. Columbia's response in the form of an affidavit by William H. Howard, Senior Vice President, was filed with the Commission on February 28, 1977.

Public notice of the complaint was issued by the Commission on February 17, 1977, providing for protests or petitions to intervene to be filed on or before February 28, 1977. Timely petitions to intervene have been filed by the Columbia Gas Distribution Companies and the Consumer Federation of America. Untimely petitions to intervene have been filed by The Cincinnati Gas & Electric Company and The Union Light, Heat and Power Company; the State of Louisiana; the Public Utilities Commission of Ohio; the Ohio Public Interest Research Group; Ohioans for Utility Reform, Inc.; Ohio State UAW-CAP Council; Pennsylvania Gas and Water Company; the Division of Consumer Counsel of the Office of the Attorney General of Virginia; the Commonwealth of Virginia; Congressman Don J. Pease, and Congressman Thomas A. Luken. The above-named petitioners have demonstrated an interest in this proceeding and their participation is in the public interest. The petitions to intervene shall accordingly be granted.

In his complaint, Senator Metzenbaum requests the Commission to investigate actions by Columbia which allegedly constitute poor business judgment and which necessitated the purchase by Columbia of additional expensive emergency supplies during the past winter. Specifically, the complaint alleges that Columbia cancelled its October system-wide curtailment of 21.2 Bcf, based on its opinion that there would be a surplus of gas in storage as of October 1, 1976,

and upon its forecast of mild winter weather, and also that cancellation of October curtailment resulted in excess sales of 20.7 Bcf during October to industrial users with alternate fuel sources. The complaint further states that by reason of these excess sales, and a pre-existing shortfall in reserves as of November 1, 1976, Columbia began the peak winter season with a shortage in storage inventory of approximately 24 Bcf. The complaint further alleges that these actions caused Columbia Gas of Ohio, Inc., a distributor affiliate of Columbia, to close schools and industries in Ohio in January 1977, and to announce increased curtailment levels for the remainder of the winter. Therefore, Senator Metzenbaum urges the Commission to require Columbia to show cause why it should be permitted to flow through to its customers the additional costs incurred through its own alleged errors in judgment.

In its response of February 28, 1977, Columbia argues that its actions during the past winter were prudent and consistent with the public interest. Columbia states that it did temporarily suspend curtailments from September 27, 1976, through the end of October, 1976, but that its actions were justified under the circumstances. In September, according to Columbia, its storage fields were being filled ahead of schedule. Purchases and production in the Appalachian area had been reduced to the minimum practical level, and the schedule of deliveries from its affiliate, Columbia Gulf Transmission Company, had been adjusted. Due to depressed market demands and physical limitations on the ability of storage fields to absorb additional injections, Columbia states that it was forced to cutback on takes from its pipeline suppliers commencing September 20, 1976, and that it suspended curtailment to avoid further irreparable loss of available flowing gas supply.

Columbia denies that suspension of curtailment resulted in excess sales of 20.7 Bcf during October. Data submitted by Columbia allegedly show that its customers' takes during the disputed period " \* \* \* were actually less than they would have been entitled to under the normal operation of Columbia's curtailment plan \* \* \*". Columbia further states that the volume taken by its customers during October, 96,349 MMcf, while considerably above the volume anticipated, was still below their aggregate entitlement under the curtailment plan. Also, Columbia asserts that its storage deficiency as of November 1, 1976, resulted from unusual volumes of high priority sales due to unanticipated cold weather during October, and not from poor business judgment in suspending curtailment.

Based upon a review of the record in this proceeding, including the complaint and the response of Columbia, the Commission finds that the issues raised in the complaint cannot be finally resolved based solely on the present pleadings and the representations of the parties. The Commission finds that a formal hearing

should be held for the purpose of investigating all relevant issues pertaining to the allegations set forth in the complaint, and that all parties, including the Commission staff, should have the opportunity to present evidence in support of their recommendations following investigation. The Commission's final decision will be based upon the hearing record. Columbia shall provide all necessary data for purposes of the present investigation and hearing.

In setting this matter for hearing, the Commission intends to review available remedies under the Natural Gas Act. Should the ultimate outcome warrant, we will apply those that are appropriate in the circumstances. The Commission's jurisdiction over Columbia's general rate filings and purchase gas cost adjustments provides full protection to Columbia's customers and ultimate consumers. Columbia's current general rate increase was filed in Docket No. RP76-95, on April 29, 1976. By order issued May 28, 1976, the Commission suspended that rate increase for five months and permitted it to become effective on November 1, 1976, subject to later refund with interest if so ordered. Columbia's current PGA rate increase, filed on January 29, 1977, was accepted and permitted to become effective on March 1, 1977, by letter order of March 1, 1977. This filing reflects changes in Columbia's current costs of purchased gas based upon the prices to be paid as of March 1, 1977, imposed upon volumes for the twelve months ending October 31, 1976. The filing also provides for recovery through a surcharge of any additional amounts credited to Columbia's deferred account through December 31, 1976. Any other increases in purchased gas costs, including costs incurred through additional or continuing emergency purchases, are credited to the deferred account and cannot be collected until a new PGA filing is made and considered by the Commission.

The Commission finds: It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that a hearing be held for the purpose of investigating the allegations set forth in the complaint of February 11, 1977.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 8, 14, 15, and 16 thereof, and the Commission's rules and regulations, a hearing shall be held in this proceeding for the purpose of investigating and determining the allegations contained in Senator Metzenbaum's complaint of February 11, 1977, against Columbia.

(B) Columbia's response to the complaint filed on February 28, 1977, shall be incorporated as part of the record of this proceeding.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge pursuant to 18 CFR 3.5(d) shall convene a prehearing conference in this proceeding on April 11, 1977, at 10:00 a.m., EST, in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE,

Washington, D.C. 20426, for the purpose of establishing procedures for the investigation and hearing to be held pursuant to this order. The Presiding Judge shall be authorized to modify all procedural dates and to establish further procedures as may in his judgment be required for purposes of the investigation and hearing pursuant to this order. The Presiding Judge shall also be authorized to rule upon all motions except motions to consolidate, sever, or dismiss, as provided for in the rules of practice and procedure.

(D) The above-named petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Federal Power Commission; *Provided, however*, That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene, and, *Provided, further*, That the admission of such intervenors shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Federal Power Commission entered in this proceeding.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission,

KENNETH F. PLUMB,  
Secretary.

[FR Doc. 77-10414 Filed 4-7-77; 8:45 am]

[Docket No. RP75-108]

**NATURAL GAS PIPELINE CO. OF AMERICA**  
Order Accepting in Part and Rejecting in Part Proposed Settlement Agreement and Setting Issue for Hearing

APRIL 4, 1977.

On May 30, 1975, Natural Gas Pipeline Company of America (Natural) filed certain revised tariff sheets incorporating a proposed increase in rates of \$52.9 Million annually for jurisdictional gas sales. By order of June 30, 1975, the Commission accepted for filing, and suspended for five months, Natural's tariff sheets. The proposed rate increase became effective, subject to refund, on December 1, 1975. As a result of two public conferences, Natural has prepared and circulated a proposed settlement agreement in this proceeding. Notice of the proposed settlement was issued on August 27, 1976, with comments due on or before September 20, 1976.

The proposed settlement agreement follows closely the provisions of the settlement agreement approved by the Commission in Opinion No. 762.<sup>1</sup> Approval of the settlement agreement will result in refunds being made for the period from December 1, 1975, to the effective date of this proposed settlement agreement. The settlement provides for an automatic change June 1, 1976, to reflect the inclusion in rate base of additional advance

payments. The settlement also provides for a refund to Natural's customers to reflect actual levels of deliveries in the event that Natural's sales exceed the projected level.

Article IV through Article IX of the settlement set forth the advance payments which are included in the settlement cost of service.

Article X deals with the return on the unamortized balance of certain non-recoverable advances pending appeal from the Commission order of February 13, 1976, in *Transcontinental Gas Pipe Line Corporation*, Docket No. RP73-69. Said appeal was filed in the United States Court of Appeals for the District of Columbia Circuit on February 25, 1976.

Article XI provides for, and contains the mechanism by which Natural may increase or decrease its rates to reflect the difference between the annualized payment to Stingray Pipeline Company for transportation of gas and the amount associated therewith in the settlement cost of service or latest adjustment thereto, and a return on the balance accumulated in a deferred account established to reflect costs associated with payments to Stingray and recovery of those costs.

Articles XII through XIV provide for further refunds depending upon whether Natural is permitted to take certain deductions for federal income tax purposes.

Article XV provides that coal lease payments made to the Nokota Company pursuant to an agreement dated January 25, 1973, may remain in the settlement cost of service pending resolution of Docket No. RP73-110.

Article XVI provides for an adjustment to Natural's rates if Natural's sales should exceed the level upon which the rates have been predicated.

Article XVII sets out the procedure for making any rate changes that may become necessary pursuant to the settlement agreement.

Article XXI states that in arriving at the rate base included in the settlement cost of service a reserve for deferred income taxes was deducted in an amount which is not in excess of the amount of reserve for deferred taxes resulting from the use of accelerated depreciation as recorded in the accounts of Natural on November 30, 1975.

The only issue to which any party objects, is the proposed rate of return on equity. The settlement agreement proposes a rate of return on equity of 13.5%. This is the return on equity approved for Natural in Opinion No. 762. The Commission Staff and the City of Chicago have filed comments on the proposed settlement objecting to this proposed rate of return on equity. Comments supporting the proposed settlement agreement have been filed by Natural and by Northern Illinois Gas Company.

In its comments, Commission Staff points out that its rate of return witness recommended a return on common equity of 12% in this proceeding. This would result in an overall rate of return of 9.10%. The proposed settlement agreement provides for an overall rate of return of 9.68% on Natural's net invest-

ment rate base. Staff points out that its evidence was submitted prior to the issuance of Opinion No. 762. Staff notes Opinion No. 762's approval of a rate of return on equity of 13.5%. In light of Opinion No. 762, Staff states that it is prepared to agree to a return on common equity of 13% rather than the 12% it had originally recommended.

In its comments, The City of Chicago only takes a position on the proposed rate of return on equity. Chicago notes that certain factors have materially changed since the Commission issued Opinion No. 762. Chicago states that Natural has experienced an improvement in the equity component of its capital structure; interest rates for short, medium and long term debt have moderated and; the economy is experiencing a moderate recovery with an inflation rate below the projected 6%. Chicago points out that Natural has continued to earn a greater return than the allowed rate of return established by the Commission, and that the market price of utility stocks, including that of Natural's parent company, The People's Gas Company, have achieved dramatic and significant gains. Chicago does concede that it has perceived no improvement in the critical natural gas supply problem facing Natural. Chicago points out that in Docket No. RP74-96, it proposed a rate of return on common equity of between 12.45% and 13% for Natural. Chicago asked that the Commission approve a rate on equity for Natural using that range. Alternatively, Chicago requests that the Commission sever the issue of rate of return from the proposed settlement and remand that issue to the Administrative Law Judge for a further hearing.

In its comments in support of the proposed settlement agreement, Natural stated that the factors which lead the Commission to approve a rate of return on equity of 13.5% in Opinion No. 762 has continued in full force and effect. In this proceeding, Natural requested a rate of return on equity of 15.25%. However, in order to settle this case, and in light of the short time that has elapsed since the issuance of Opinion No. 762, Natural has agreed to a continuation of the 13.5% rate of return on equity approved therein. Natural points out that it is facing expanding capital requirements in order to finance projects needed to maintain reasonably adequate service at a time when the gas shortage has greatly magnified business risks. Natural has continued curtailment on its system and its reserve life index has fallen to 9.1 at the end of 1974. Reserve additions during the last 5 years have averaged only one-third of Natural's annual sales.

In order to offset curtailments on its system, Natural has entered into supplemental supply projects. Supplemental supply projects, according to Natural, involve such large capital requirements and high risks that they aggravate, rather than alleviate, the pipeline's cost recovery problem. Natural states that its capital requirements have risen from \$83.7 Million in 1970, to \$243 Million in 1973. Natural anticipates spending \$1.3 Billion over the next four years, with an addi-

<sup>1</sup> *Natural Gas Pipeline Company of America*, Opinion No. 762, Docket No. RP74-96, May 21, 1976.

tional \$800 Million required for coal gasification projects. To raise equity capital, Natural sells common stock to its parent, Peoples. Natural points out that Peoples' stock is selling below book value and that the cost of new equity to Peoples exceeds the earnings that Peoples could expect to make by investing their equity in Natural. Natural points out that its ability to market debt without selling new equity to Peoples is limited by the low level of coverages. In 1973, Moody's reduced Natural's rating on its first mortgage bonds to an A rating and on Natural's debentures of Baa.

Natural points out that if the return to Natural does not measure up to the alternatives available, Natural will be unable to raise capital on reasonable terms. Natural points out that its rate of return must be commensurate with returns to enterprises of corresponding risks, sufficient to maintain the credit and financial integrity of the regulated company, and adequate to attract capital to the enterprise. Natural points out that the Staff witness stated that Natural is falling behind other major interstate pipelines in certain indicators. These include, a lower than average revenue growth, a lower than average common equity ratio, a rate of return on equity below the average for other interstate pipelines, a sales life gas reserve index below that of other major pipelines, and lower post interest coverages than the industry generally maintains.

Natural contends that the investment by Peoples and Natural on the scale required would be difficult for Natural to justify to Peoples' management were Natural's rate of return on equity reduced from 13.5% granted in Opinion No. 762. Natural states that it is imperative that the rate of return on equity of 13.5% provided in the settlement agreement be approved in order to assist Natural in raising capital to support further gas supply projects.

In view of the allegations raised by the City and the fact that the record evidence relied on by the Commission in Opinion No. 762 is at best over a year old, the rate of return issue should be severed from the settlement proposal and set for hearing. Too often, a Commission decision on a rate of return issue is treated as a floor (or ceiling) by a pipeline and its customers as was the case here. This interpretation is in error, for each Commission decision must be supported by the evidentiary record in the proceeding at hand.

We find that the other provisions of the proposed settlement agreement, to which no party objects, should be approved and permitted to take effect. Natural shall continue to collect the rates applied for subject to refund, and the status quo will be preserved until a decision is reached on the rate of return issue.

The Commission further finds: (1) It is desirable and in the public interest that the settlement agreement submitted by Natural in this proceeding be accepted, with the exception indicated above.

(2) Good cause exists to sever and set for hearing the issue of the appropriate rate of return for Natural Gas Pipeline Company of America.

The Commission orders: (A) The Stipulation and Agreement, submitted by Natural, and incorporated herein by reference, is approved except as to the issue of rate of return.

(B) The issue of the proper rate of return for Natural is remanded for hearing in this docket.

(C) Pursuant to the authority of the Natural Gas Act, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR Chapter 1) a prehearing conference shall be held before a Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge, at a date to be designated by the Presiding Administrative Law Judge, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(D) The Presiding Administrative Law Judge shall preside at the initial conference in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss, as provided for in the Rules of Practice and Procedure).

By the Commission. Commissioner Watt, concurring in part and dissenting in part, filed a separate statement (filed as part of the original document).

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10425 Filed 4-7-77;8:45 am]

[Docket No. CP76-408]

#### NORTHWEST PIPELINE CORP.

##### Amendment to Application

APRIL 4, 1977.

Take notice that on March 23, 1977, Northwest Pipeline Corporation (Applicant) P.O. Box 1526, Salt Lake City, Utah 84110 filed in Docket No. CP76-408 an amendment to their application filed in said docket pursuant to Section 7(c) of the Natural Gas Act by which amendment Applicant requests authorization to limit the proposed transportation service for IGC Production Company (IGC), Thermal Development Company (Thermal) and Development Inc. (Development), all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In the initial application Applicant proposes to transport volumes of natural gas in quantities of up to 10,000 Mcf per day for the accounts of IGC, Thermal and Development, and was granted temporary authorization on February 16, 1977.

By this amendment, applicant requests that the authorization be modified to provide for the transportation of up to 10,000 Mcf per day for the accounts of IGC, Thermal and Development but only to the extent that such transportation

shall not affect Northwest's pre-existing contract commitments.

Applicant states that California-Pacific Utilities Company, Northwest Natural Gas Company, Cascade Natural Gas Company, also existing customers of Applicant, have expressed concern that the transportation service to be provided IGC, Thermal and Development by Applicant may at some future time preempt pipeline capacity which would otherwise be available to meet the present contract commitments, without concomitant benefits to other customers of Applicant.

This amendment stated that IGC, Thermal and Development have been advised of the proposed amendment and agree to Applicant's request to limit the proposed transportation.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 21, 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. All persons who have heretofore filed need not do so again.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10420 Filed 4-7-77;8:45 am]

[Docket No. CP77-309]

#### PANHANDLE EASTERN PIPE LINE CO.

##### Application

APRIL 4, 1977.

Take notice that on March 22, 1977, Panhandle Eastern Pipe Line Company (Applicant), 3000 Bissonnet Avenue, Houston, Texas, and 3444 Broadway, Kansas City, Missouri, filed in Docket No. CP77-309 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of St. Peter and Galesville Formations in Waverly, Illinois, as one underground gas storage field with a combined total maximum reservoir gas content of 55,000,000 Mcf, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that the St. Peter and The Galesville Formations were developed under separate certificates of public convenience and necessity for use as storage reservoirs in Applicant's Waverly Storage Field. The Galesville Formation has an authorized maximum reservoir gas content of 25,000,000 Mcf, and St. Peter has an authorized maxi-

mun reservoir gas content of 30,000,000 Mcf, it is said.

Applicant states that it recently discovered that the two formations are so closely geologically linked to each other that there has been an inadvertent transfer of gas from the Galesville into the St. Peter Formation. Consequently, it has become impractical to treat the two storage reservoirs separately, it is indicated.

Applicant proposes to operate the St. Peter and Galesville Storage Reservoirs under one certificate combining the present maximum reservoir gas content to 55,000,000 Mcf. Applicant states that it would utilize its existing facilities to effectuate the proposed operation.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 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.

LOIS D. CASHELL,  
Acting Secretary.

[PR Doc.77-10423 Filed 4-7-77;8:45 am]

[Docket No. ID-1806]

ROBERT H. PEARSON  
Application

APRIL 4, 1977.

Take notice that on March 23, 1977, Robert H. Pearson, Vice President of Northeast Utilities Service Company, filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Position, name of corporation, and classification

Vice President,<sup>1</sup> The Connecticut Light and Power Company, Public Utility.  
Vice President,<sup>1</sup> The Hartford Electric Light Company, Public Utility.  
Vice President,<sup>1</sup> Western Massachusetts Electric Company, Public Utility.  
Vice President,<sup>1</sup> Holyoke Water Power Company, Public Utility.  
Vice President,<sup>1</sup> Holyoke Power and Electric Company, Public Utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with 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 April 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,  
Acting Secretary.

[PR Doc.77-10415 Filed 4-7-77;8:45 am]

[Docket No. CP77-313]

TEXAS EASTERN TRANSMISSION CORP.  
Application

APRIL 4, 1977.

Take notice that on March 25, 1977, Texas Eastern Transmission Corporation (Applicant), P.O. 2521, Houston, Texas 77001, filed in Docket No. CP77-313 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and storage of natural gas on a best efforts basis for three years for Algonquin Gas Transmission Company, Brooklyn Union Gas Company, Elizabethtown Gas Company, Long Island Lighting Company, New Jersey Natural Gas Company, Philadelphia Electric Company, Philadelphia Gas Works, Public Service of New Jersey, Carnegie Natural Gas Company, Consolidated Edison Company of New York, Missouri Utilities Company, National Gas & Oil Corporation, Penn Fuel Gas, Inc., and United Cities Gas Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has obtained 30,000,000 Dekatherms of storage space from Consolidated Gas Supply Corporation (Consolidated) for three years pursuant to an agreement dated March 21, 1977. Applicant further states that the total 30,000,000 Dekatherms is comprised of 19,300,000 Dekatherms of storage space presently allocated among 8 of Applicant's customers utilizing Consolidated's

<sup>1</sup> Elected to these positions on March 1, 1977.

storage service pursuant to authorization granted by the Commission in Docket No. CP73-206 and the remaining 10,700,000 Dekatherms of storage space would be allocated to certain of the existing customers and to six additional customers of Applicant. Applicant states that it would use its existing facilities to render the proposed services and the term of the proposed services would be from April 16, 1977 through April 15, 1980.

During each of the 1977, 1978 and 1979 injection periods Applicant has agreed to deliver to Consolidated for injection into storage, on a best efforts basis, such quantities of gas of Applicant's customers as are mutually agreed upon, and during each of the withdrawal periods, Consolidated shall, on a best efforts basis, deliver to Applicant the storage gas of its customers as requested at reasonably constant daily rates not to exceed 221,400 Dth, it is said. Applicant states that any natural gas not taken during the withdrawal period would be carried over to the next injection period on an individual basis, and any carried over inventory and the injections shall not exceed at any time 30,000,000 Mcf.

The volume of natural gas involved in the proposed storage and transportation service for each participating company is:

Customer	Maximum daily withdrawal quantity	Total storage quantity	
		Dekatherms	Dekatherms
Algonquin Gas Transmission Co.	58,805	7,228,000	1,550,000
Brooklyn Union Gas Co.	12,960	1,500,000	1,500,000
Carnegie Natural Gas Co.	11,971	2,065,000	2,065,000
Consolidated Edison Co.	13,600	2,450,000	2,450,000
Elizabethtown Gas Co.	12,720	4,122,000	4,122,000
Long Island Lighting Co.	29,080	100,000	100,000
Missouri Utilities Co.	662	300,000	300,000
National Gas & Oil Corp.	1,987	780,000	151,000
New Jersey Natural Gas Co.	8,107	1,950,000	1,950,000
Penn Fuel Gas, Inc.	1,600	1,197,000	1,197,000
Philadelphia Electric Co.	12,971	6,861,000	50,000
Philadelphia Gas Works	7,947	6,861,000	50,000
Public Service Electric & Gas Co.	40,300	30,000,000	30,000,000
United Cities Gas Co.	331	50,000	50,000
Total	221,400	30,000,000	30,000,000

Applicant proposes to store and transport the storage quantities for the 14 proposed customers on the basis of its Interim Storage Service tariff sheets (ISS). Applicant states that the transportation and storage rate that it proposed to charge under the Rate Schedule ISS is a composite of Consolidated's GSS storage Service Charge, and a charge for transportation equal to the in-zone rates under Applicant's Rate Schedule TS-1. It is stated that the demand rate, space rate, injection rate, and withdrawal rate are charged to Applicant on the basis of Consolidated's GSS rate which, when adjusted for shrinkage, is passed directly on to Applicant's participating customers. It is further stated that under the terms of the proposed Rate Schedule ISS, Applicant would provide, during the withdrawal period of each contract year, quantities of natural gas from a customer's storage inventory not to exceed the Maximum Daily Withdrawal

Quantity, less 6 percent to be retained by Applicant for fuel and other company use.

Applicant states that for those customers who nominate to receive gas under the Rate Schedule ISS, such gas that does not exceed a particular customer's existing curtailment rate on any one day would be defined as Basic Withdrawal Gas, and the basic withdrawal rate includes the GSS withdrawal charge of 1.00 cent, adjusted for shrinkage, plus the in-zone transportation rate which is based on the DCQ Commodity Rates, less gas purchase and fuel cost. It is asserted that any natural gas received under the rate schedule ISS that exceeds the present curtailment level on any one day would be defined as excess withdrawal gas. The rate for excess withdrawal gas is the in-zone transportation rate based on the DCQ 100 percent load factor rates less gas purchase and fuel cost, plus the GSS withdrawal charge of 1.00 cent adjusted for shrinkage, it is said.

Applicant states that in the event customers receiving this ISS service are also obtaining additional service under the Rate Schedule TS-1, which services when combined would exceed the total of the curtailment of sales to the customer on any day, the customer must nominate which is based on the DCQ Commodity which service is to be firm and which service is to be interruptible.

Applicant states that under the proposed services its customers would be able to store natural gas supplies during the low demand summer months for use during the high demand winter season, eliminating some of the adverse effects of curtailments that have been so wide spread during this heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 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.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc. 77-10422 Filed 4-7-77; 8:45 am]

[Docket No. E77-84]

#### TEXAS GAS TRANSMISSION CORP.

##### Emergency Order Pursuant to Emergency Natural Gas Act of 1977

On April 1, 1977, Texas Transmission Corporation (Texas Gas), as agent for certain of its customers,<sup>1</sup> filed, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application for authorization to transport natural gas which it is purchasing for certain of its customers.

Texas Gas, as agent, executed a contract on March 9, 1977, with Amoco Production Company (Amoco) for the purchase of approximately 1500 Mcfd from the Carthage Field, Panola County, Texas. The total price to be paid by Texas Gas, as agent, is \$2.16 per MMBtu. Thus, the proposed price is fair and equitable in accordance with Order No. 2.

Texas Gas will receive these volumes at the outlet of the Champlin Gasoline Plant, Panola County, Texas and transport these supplies through its existing pipeline facilities to the customers for which it is purchasing the gas. Texas Gas' proposed transportation rates are based upon the cost data supporting the settlement rates in Texas Gas' most recent Federal Power Commission rate case in Docket No. RP76-17 and the retention of a percent of the transported volumes for compressor fuel and company use and loss. I find no basis on which to fix other charges since the parties have agreed upon the transportation charges.

Based upon the foregoing, Texas Gas is authorized to purchase gas, as agent, from Amoco and to transport such gas for certain of its customers. This authorization is conditioned on (i) Texas Gas' submission of the names of the customers for which it is acting as agent, (ii) those customers agreeing to submit reports as required by Order No. 4 and (iii) such customers certifying that they are entitled to purchase gas under the provisions of Order No. 6.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Texas Gas and Amoco. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing au-

<sup>1</sup>These customers are local distribution companies and interstate pipelines as defined in §§ 2 (1), (5) of the Act (91 Stat. 4).

thority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,  
Administrator.

APRIL 4, 1977.

[FR Doc. 77-10412 Filed 4-7-77; 8:45 am]

[Docket No. E77-83]

#### TRANSCONTINENTAL GAS PIPE LINE CORP.

##### Emergency Order Pursuant to Emergency Natural Gas Act of 1977

On April 1, 1977, Transcontinental Gas Pipe Line Corporation (Transco) filed, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), a notification that effective April 1, 1977, Transco will impose transportation charges for all interruptible transportation services (transportation from supply areas to market areas) provided under the Act.<sup>1</sup>

These charges will apply to all volumes purchased under the Act by Transco as agent for certain of its customers<sup>2</sup> and to volumes transported for others pursuant to orders of the Administrator.<sup>3</sup> For the reasons set forth below, I approve Transco's proposed transportation rates subject to the condition that Transco agree to collect such amounts subject to refund pending the resolution of Transco's pending rate proceedings in Federal Power Commission (FPC) Docket Nos. RP76-136, RP77-26 and RP77-48 and any other rate proceeding applicable to the period during which these transportation services are rendered.

Transco states that the FPC Staff has taken the position in Docket No. RP76-136 that Transco should fully allocate costs to the transportation services rendered for third parties. Thus, Transco's failure to collect transportation rates for services rendered under the Act could expose Transco to substantial losses if the FPC adopts its Staff's position. Therefore, I conclude that Transco should charge the proposed transportation rates subject to refund pending the resolution of Transco's pending rate proceedings.

Pursuant to § 6(c)(1) of the Act (91 Stat. 4, 8), I find that Transco should charge its proposed transportation rates for all volumes purchased for others pursuant to § 6(a) of the Act (91 Stat. at 7-8) and transported by Transco. Such rates shall be collected subject to refund

<sup>1</sup>These charges are in addition to the retention of a percentage of the volumes transported for compressor fuel.

<sup>2</sup>Transco is purchasing gas as agent for certain of its customers in Docket Nos. E77-14, E77-34, E77-58, E77-63 and E77-72. In addition, Transco is purchasing gas as agent in approximately fifteen transactions which do not require prior notification to or approval by the Administrator pursuant to Order No. 2.

<sup>3</sup>Transco is transporting gas for others in Docket Nos. E77-18, E77-20, E77-40, E77-41, and E77-42.

pending the resolution of Transco's FPC rate proceedings in Docket Nos. RP76-136, RP77-26, and RP77-48 and any other FPC rate proceeding applicable to the period during which these transportation services are rendered.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon all parties in Docket Nos. E77-14, E77-18, E77-20, E77-34, E77-40, E77-41, E77-42, E77-58, E77-63, and E77-72. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under P.L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,  
Administrator.

APRIL 4, 1977.

[FR Doc.77-10413 Filed 4-7-77;8:45 am]

[Docket No. CP77-314]

**TRUNKLINE GAS CO.**

**Application**

APRIL 4, 1977.

That notice that on March 25, 1977, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-314 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing June 11, 1977, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers and other similar sellers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type authorization is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed \$10,000,000 with no single onshore project to exceed \$1,500,000 and no single offshore project to exceed \$2,500,000. Applicant states that the proposed facilities would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 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.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10421 Filed 4-7-77;8:45 am]

[Docket No. RM75-27]

**UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES AND FOR NATURAL GAS COMPANIES (CLASSES A, B, C, AND D)**

Order Granting Application for Rehearing for the Purpose of Further Consideration

APRIL 1, 1977.

In the matter of Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C and D) to provide for the Determination of Rate for Computing the Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports.

On March 4, 1977, El Paso Gas Company, Public Systems,<sup>1</sup> three bulk power suppliers for rural electric cooperatives,<sup>2</sup> and eight investor-owned public utilities<sup>3</sup> filed Applications for Rehearing of our Order No. 561, issued February 2, 1977, in Docket No. RM75-27. On March

<sup>1</sup> See Appendix A for the members of Public Systems.

<sup>2</sup> Oglethorpe Electric Membership Corporation, North Carolina Electric Membership Corporation and Old Dominion Electric Cooperative, Inc.

<sup>3</sup> Jersey Central Power & Light Company, Long Island Lighting Company, Metropolitan Edison Company, New England Power Company, Northeast Utilities Company, Pacific Power & Light Company, Pennsylvania Electric Company and Pennsylvania Power & Light Company.

4, 1977, Pennsylvania Power & Light Company filed a separate Application for Rehearing. In order to provide adequate time for consideration of the merits of the arguments raised by the various applications, we shall grant rehearing for the limited purpose of further consideration.

The Commission orders: (A) The Application for Rehearing filed by the above-mentioned petitioners are hereby granted for the limited purpose of further consideration of Order No. 561.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,  
Secretary.

**APPENDIX A.—PUBLIC SYSTEMS SPONSORING THE APPLICATION FOR REHEARING OF ORDER No. 561**

Anaheim, Azusa, and Banning, California, Bowling Green and Bryan, Ohio, Colton, California, Crowell, Michigan, Electricities of North Carolina and its members, the following municipalities:

**VIRGINIA**

Blackstone	Iron Gate
Culpeper	Manassas
Franklin	Wakefield
Harrisonburg	

**NORTH CAROLINA**

Albemarle	Laurinburg
Apex	Lexington
Ayden	Lincolnton
Belhaven	Louisburg
Benson	Lucama
Black Creek	Lumberton
Bostic	Macesfield
Cherryville	Maiden
Clayton	Monroe
Concord	Morganton
Cornelius	Murphy
Dallas	New Bern
Davidson	Newton
Drexel	Oak City
Edenton	Pikeville
Elizabeth City	Pinetops
Enfield	Pineville
Farmville	Red Springs
Fayetteville	Robersonville
Forest City	Rocky Mount
Fountain	Scotland Neck
Fremont	Selma
Gastonia	Sharpsburg
Granite Falls	Shelby
Greenville	Smithfield
Hamilton	Southport
Hertford	Stantonsburg
Highlands	Statesville
High Point	Tarboro
Hobgood	Wake Forest
Hookerton	Walstonburg
Huntersville	Washington
Kings Mountain	Waynesville
Kinston	Wilson
LaGrange	Windsor
Landis	Winterville

**MUNICIPALS AND COOPERATIVES IN THE STATE OF FLORIDA**

Alachua	Leesburg
Bartow	Mount Dora
Bushnell	Newberry
Chattahoochee	Ocala
Fort Meade	Quincy
Lake Helen	Williston
Frankfort, Kentucky	

INDIANA MUNICIPAL ELECTRIC ASSOCIATION AND ITS MEMBERS, THE FOLLOWING MUNICIPALITIES IN INDIANA

Town of Bainbridge	City of Linton
Town of Bargersville	Town of Middletown
Town of Centerville	Town of Paoli
Town of Covington	Town of Pendleton
Town of Darlington	City of Rising Sun
Town of Edinburg	Town of Rockville
Town of Flora	City of Scottsburg
Town of Greendale	Town of South Whitley
City of Greenfield	
Town of Hagerstown	Town of Thorntown
Lawrenceburg Utilities	City of Tipton
Lawrenceburg	Town of Veedersburg
City of Lebanon	Town of Waynetown

NEPCO CUSTOMER RATE COMMITTEE (SUCCESSOR TO THE POWER PLANNING COMMITTEE OF THE MUNICIPAL ELECTRIC ASSOCIATION OF MASSACHUSETTS, INC.) AND ITS MEMBERS THE FOLLOWING MASSACHUSETTS MUNICIPAL LIGHT DEPARTMENTS AND PLANTS

Ashburnham	Paxton
Boylston	Peabody
Danvers	Princeton
Georgetown	Shrewsbury
Groton	Sterling
Hingham	Templeton
Holden	Wakefield
Hudson	West Boylston and Manchester Electric Company
Hull	New Hampshire Electric Cooperative, Inc.
Ipswich	Littleton, New Hampshire
Littleton	
Mansfield	
Marblehead	
Merrimac	
Middleton	
North Attleboro	

City of Riverside, California  
Vermont Electric Cooperative, Inc., Johnson, Vermont  
Village of Clinton, Michigan  
Village of Sebewalq, Michigan

[FR Doc.77-10427 Filed 4-7-77; 8:45 am]

[Docket No. ER77-263]

VERMONT ELECTRIC POWER CO., INC.  
Rate Schedule Filing

APRIL 4, 1977.

Take notice that on March 28, 1977, Vermont Electric Power Company, Inc. (Velco) tendered for filing a Rate Schedule for the sale of eleven thousand kilowatts (11,000 kW) and related energy from the Vermont Yankee Nuclear Electric Generating Unit in Vernon, Vermont, dated as of November 30, 1976, to the Templeton Municipal Lighting Plant, Mansfield Municipal Electric Department, Littleton Electric Light & Water Department, Westfield Gas & Electric Light Department, Middleborough Gas & Light Department, Hingham Municipal Lighting Plant, Holden Municipal Lighting Plant, Ipswich Municipal Light Department, and the Danvers Electric Department, all of which are located in the Commonwealth of Massachusetts.

Velco states that the service to be rendered under this Rate Schedule consists of 11,000 kW capacity and related energy from the Vermont Yankee Unit to nine municipal power departments in the Commonwealth of Massachusetts for an eleven month period commencing November 30, 1976 and ending on October 30, 1977 at an estimated monthly charge of \$103,500.00 total for all nine Municipal Purchasers. Velco states that the

Vermont Yankee power sold to the Municipal Purchasers will be at its cost to Velco, and that therefore there will be no change in the overall rate of return of Velco.

Velco requests a waiver of § 35.3 of the Commission's Rules and Regulations to allow an effective date of December 1, 1976, citing extended contract negotiations with the nine Massachusetts Municipal Purchasers, and no effect upon purchasers of Velco power under other Rate Schedules, if the waiver is granted.

Copies of the filing were served upon the nine Massachusetts Municipals and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 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 April 20, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10417 Filed 4-7-77; 8:45 am]

[Docket No. CP77-308]

WESTERN TRANSMISSION CORP.

Application

APRIL 4, 1977.

Take notice that on March 21, 1977, Western Transmission Corporation (Applicant), 2700 Fidelity Union Tower, Dallas, Texas 75201, filed in Docket No. CP77-308 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for an initial term of two years for Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Panhandle has acquired new sources of gas in certain acreage in Carbon County, Wyoming, and that Panhandle proposes to execute an agreement with Colorado Interstate Gas Company (CIG), for whom applicant also transports gas, for the purchase of up to 25 percent of the subject gas and for the transportation by CIG and exchange of the remainder of the proposed volumes of gas.

It is indicated that Panhandle would deliver the subject gas under its control to Applicant at points on Applicant's pipeline located in Carbon County, Wyoming, for transportation and delivery to CIG at an existing point of interconnection in Sweetwater County, Wyoming. Applicant further states that

no new facilities would be required to render the proposed transportation service.

It is asserted that Panhandle would pay Applicant a transportation charge equal to the differential rate set forth in Applicant's Rate Schedule F between Applicant's gas cost and Applicant's selling price to CIG as established by the Commission in Opinion No. 616, as the same may be modified and amended from time to time or as replaced by a subsequent Commission order. Currently, the differential rate permitted by Opinion No. 616 and the effective transportation charge is 9.0 cents per Mcf at 14.65 psia, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 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 and 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.

LOIS D. CASHELL,  
Acting Secretary.

[FR Doc.77-10424 Filed 4-7-77; 8:45 am]

FEDERAL RESERVE SYSTEM

COMMERCE BANCSHARES, INC.

Order Denying Acquisition of Bank

Commerce Bancshares, Inc., Kansas City, Missouri, 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 51.96 percent of the voting shares of the Farmers State Bank, St. Joseph, Missouri, St. Joseph, Missouri ("Bank").

Notice of the application, 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 the Board has considered the application and all comments received, including those submitted by the Missouri Commissioner of Finance and by the U.S. Department of Justice, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the third largest banking organization in Missouri, controls 31 banks with aggregate deposits of approximately \$1.3 billion, representing 7.7 percent of the total commercial bank deposits in the State.<sup>1</sup> Acquisition of Bank (\$13.3 million in deposits) would not significantly increase the concentration of banking resources in Missouri; however, it would have adverse effects upon concentration in the relevant market.

Bank, the fifth largest of 21 banks in the relevant market<sup>2</sup> and the only remaining independent bank in the City of St. Joseph, has total deposits of \$13.3 million, representing 3 percent of the total commercial bank deposits in the relevant market. Applicant is already represented in the St. Joseph market through its ownership of Commerce Bank of St. Joseph ("Commerce Bank"). Commerce Bank is the fourth largest bank in the market, with total deposits of \$39.9 million, representing 8.83 percent of the total commercial bank deposits in the relevant market. The four largest banking organizations in the St. Joseph banking market hold in the aggregate about 85.6 percent of total commercial bank deposits in the market. Consummation of this proposal would further increase that concentration level to 88.6 percent and Applicant would enhance its position in the market by becoming the third largest banking organization.

In addition to having adverse effects on concentration in the St. Joseph market, it appears that consummation of this proposal would eliminate significant existing competition between Bank and Commerce Bank. Applicant maintains that Bank and Commerce Bank serve essentially different kinds of customers<sup>3</sup> and that Bank's location and orientation toward farm lending make it unlikely that Bank would expand its operations in the primary service area of Commerce Bank. However, the record shows that each derives a significant amount of its deposits and loans from the service area of the other. Thus, the Board concludes that consummation of the proposal would eliminate significant existing competition between Applicant and Bank.

<sup>1</sup> All banking data are as of December 31, 1975.

<sup>2</sup> The relevant market is the St. Joseph banking market, which is approximated by Buchanan County (less Rush and Bloomington Townships), Andrew County, and western DeKalb County, all in Missouri, and northern Doniphan County in Kansas.

<sup>3</sup> Applicant characterizes Commerce Bank's customers as primarily a merchant and wage-earner clientele not associated with the south St. Joseph area. Applicant states that Bank

in acting on this application, the Board has also considered the comments of the Department of Justice and of the Missouri Commissioner of Finance ("the Commissioner") and Applicant's responses thereto. Both the Department of Justice and the Commissioner indicated that, in their respective opinions, the proposed acquisition would eliminate existing competition and lead to a further concentration of banking resources in the City of St. Joseph. Both agencies noted that because Bank was the last independent bank in the City of St. Joseph, it was a likely candidate for acquisition as a vehicle for entry into the City of St. Joseph by a regional or Statewide banking organization not presently represented in the market.

While both the Department of Justice and the Commissioner placed emphasis on the effects of the proposal on the City of St. Joseph rather than the somewhat larger St. Joseph banking market,<sup>4</sup> the Board is of the view that their general findings as to the adverse effects of the subject proposal are supported by the facts of record. In addition, the Board finds on the basis of the foregoing and other facts of record, that competitive considerations relating to this application weigh sufficiently against approval so that it should not be approved unless the anticompetitive effects are clearly outweighed by benefits to the public in meeting the convenience and needs of the community to be served.

The financial and managerial resources and prospects of Bank are regarded as satisfactory. The financial and managerial resources and prospects of Applicant and its subsidiaries are regarded as generally satisfactory. Although Applicant would incur some debt as a result of this acquisition, it appears that Applicant's earnings from normal operations are sufficient to retire that debt as projected. Accordingly, the Board finds that considerations relating to financial and managerial resources and future prospects are consistent with approval; however, such considerations do not lend significant weight for approval of the application.

Applicant states that upon acquisition of Bank it would expand Bank's services, including increasing Bank's lending capacity through loan participations and providing Bank with agricultural lending advice. The Board notes that bank has only a limited need for help in handling loans above its present legal lending limit.<sup>5</sup> Furthermore, with respect to Ap-

primarily serves agriculturally oriented businesses in the south St. Joseph area. The Board does not view this as a legitimate distinction in defining the relevant product for purposes of competitive analysis.

<sup>4</sup> See the Board's Order approving the merger of Ameribanc, Inc., St. Joseph, Missouri, with First American Bancshares, Inc., St. Joseph, Missouri. 62 Federal Reserve Bulletin, p. 384.

<sup>5</sup> Bank has no large business customers, and the farmers in its service area conduct small operations. The few loans for which Bank has needed assistance have been readily handled by its St. Joseph and Kansas City correspondents.

plicant's proposal to provide Bank with agricultural lending advice, Applicant made a similar argument in its earlier application to the Board to acquire Commerce Bank some six years ago, and it appears that Commerce Bank has made no significant increases in its agricultural lending program since its acquisition by Applicant. Accordingly, the Board finds that little weight can be accorded such services and that considerations relating to the convenience and needs of the community to be served lend no significant weight toward approval of the application. In summary, therefore, the considerations relating to banking factors and the considerations relating to the convenience and needs of the community to be served do not outweigh the adverse competitive effects that would result from Applicant's acquisition of Bank.

On the basis of the facts in the record, and in light of the factors set forth in section 3(c) of the Act, it is the Board's judgment that approval of the proposal would not be in the public interest. Accordingly, the application is denied for the reasons summarized herein.

By order of the Board of Governors,<sup>6</sup> effective April 1, 1977.

GRIFFITH L. GARWOOD,  
Deputy Secretary of the Board.

[FR Doc. 77-10384 Filed 4-7-77; 8:45 am]

#### EQUIMARK CORP.

##### Request for Determination and Notice Providing Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)) ("the Act"), by Funding Systems Corporation, Pittsburgh, Pennsylvania ("FSC"), for a determination that Equimark Corporation, Pittsburgh, Pennsylvania, a bank holding company, is not nor will be capable of controlling Floyd R. Ganassi or G. Gray Garland, Jr., of Pittsburgh, Pennsylvania, and each of whom is an officer of FSC. On April 22, 1975, Equimark Corporation transferred shares of FSC to Messrs. Ganassi and Garland, both of whom, on that date, were indebted to Equibank, N.A., Pittsburgh, Pennsylvania, a subsidiary of Equimark Corporation. On that date, FSC was also indebted to Equibank, N.A. Debt owed by Messrs. Ganassi and Garland and by FSC to Equibank, N.A. has, since April 22, 1975, continued.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or any company which but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor or has one or more officers, directors, trustees, or beneficiaries in common with or sub-

<sup>6</sup> Voting for this action: Governors Wallich, Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Chairman Burns and Governor Gardner.



ject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor, unless the Board, after opportunity for hearing, determines that the transferor is not, in fact, capable of controlling the transferee.

Notice is hereby given, that, pursuant to section 2(g) (3) of the Act, an opportunity is provided for filing a request for oral hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than May 2, 1977. If a request for oral hearing is filed, each request should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which such person wishes to give testimony. The Board subsequently will designate a time and place for any hearing it orders, and will give notice of such hearing to the transferor, the transferee, and all persons that have requested an oral hearing. In the absence of a request for an oral hearing, the Board will consider the requested determination on the basis of documentary evidence filed in connection with the application.

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

GRIFFITH L. GARWOOD,  
*Deputy Secretary of the Board.*

[FR Doc.77-10385 Filed 4-7-77;8:45 am]

[Reg. C; Docket No. R-0047]

#### EXEMPTION APPLICATION UNDER THE HOME MORTGAGE DISCLOSURE ACT OF 1975

New York State

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: On December 8, 1976, the Board issued an Order exempting New York State depository institutions that are subject to the State Banking Department's loan disclosure regulation (Supervisory Procedure G-107) from the disclosure requirements of the Home Mortgage Disclosure Act and implementing Regulation C. Pursuant to the Board's Order, the State Banking Department has submitted amendments to its disclosure regulation, and the Board must determine whether the amendments satisfy the requirements of the Order.

DATE: Comments regarding the amendments must be received on or before May 2, 1977.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the docket number R-0047.

#### FOR FURTHER INFORMATION CONTACT:

Anne J. Geary, Acting Chief, Equal Credit Opportunity Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3946).

On June 22, 1976, the Banking Department of the State of New York applied to the Board for an exemption from the disclosure requirements of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801-2809), as implemented by Regulation C (12 CFR 203). The Department's application was filed pursuant to section 306(b) of the Act (12 U.S.C. 2805(b)) and section 203.3(a)(3) and the Supplement to Regulation C (12 CFR 203.3(a)(3)), and was based upon the requirements of the Department's Supervisory Procedure G-107. Notice of the application, affording opportunity for interested parties to submit comments, was published in the FEDERAL REGISTER on July 20, 1976 (41 FR 29917).

On December 8, 1976, based on the record before it, the Board approved the Department's exemption application. The Board's Order was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55583). The Board in its Order, however, required:

That the New York State Banking Department promulgate an amendment to the provisions of its Supervisory Procedure G 107 to require depository institutions subject to that Procedure to disclose all mortgage loans acquired by any means during each fiscal year, commencing with the last full fiscal year ending prior to July 1, 1976, in at least the detail required pursuant to Section I of Appendix 8 of the Procedure. Any amendments to comply with this condition must become effective by June 1, 1977, and a copy of the amendments must be filed with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, by April 1, 1977.

Pursuant to that requirement, the Department has submitted to the Board amendments to its Supervisory Procedure G-107. Copies of the amendments and the Board's Order are available for public inspection and copying during regular business hours in Room B 1118 at the Board's Offices, Twentieth Street and Constitution Avenue NW., Washington, D.C., and at the Federal Reserve Bank of New York, 33 Liberty Street, New York City.

The Board must determine whether the amendments to Supervisory Procedure G-107 satisfy the requirements of its December 8, 1976 Order. To aid in the Board's consideration of this matter, interested persons are invited to submit relevant data, views, and arguments in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than May 2, 1977. All submitted materials should include a reference to docket number R-0047. The comments that are received will be made available for public inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding the avail-

ability of information (12 CFR 261.6(a)).

By order of the Board of Governors, April 1, 1977.

THEODORE E. ALLISON,  
*Secretary of the Board.*

[FR Doc.77-10386 Filed 4-7-77;8:45 am]

#### GENERAL SERVICES ADMINISTRATION

#### PRIVACY ACT OF 1974

#### Deletion of a System of Records

On September 8, 1976, there was published in the FEDERAL REGISTER (41 FR 38088 through 38145) annual notices of systems of records pursuant to the provisions of the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a. This notice deletes the system of records identified as "Quality Control Automated Management System GSA/FSS-1," system identification number 23-00-0084, 41 FR 38137. It has been determined that the system measures work hours simply as a means to evaluate the efficiency of a system and is not kept as a measure of an employee's job performance.

Dated at Washington, D.C., on March 29, 1977.

PAUL S. CARTER,  
*Acting Director of Administration.*

[FR Doc.77-10429 Filed 4-7-77;8:45 am]

#### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### Food and Drug Administration

#### CONTRACEPTIVES AND OTHER VAGINAL DRUG PRODUCTS PANEL

#### Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The meeting scheduled for April 22 and 23, 1977, of the Contraceptives and Other Vaginal Drug Products Panel is cancelled.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announced in a notice published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14175), meetings of advisory committees and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act.

Notice is hereby given that the meeting of the Contraceptives and Other Vaginal Drug Products Panel scheduled for April 22 and 23, 1977, in Conference Rm. A, Parklawn Bldg., Rockville, MD, has been cancelled.

Dated: March 30, 1977.

WILLIAM F. RANDOLPH,  
*Acting Associate Commissioner for Compliance.*

[FR Doc.77-10144 Filed 4-7-77;8:45 am]

## Food and Drug Administration

[Docket No. 76N-0233]

HESS &amp; CLARK, ET AL

## Nihydrazone (NF-64); Withdrawal of Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration withdraws approval of certain new animal drug applications (NADA's) for nihydrazone (NF-64).

DATES: Effective April 8, 1977.

## FOR FURTHER INFORMATION CONTACT:

David P. Ducharme, Bureau of Veterinary Medicine (HFV-140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857. (301) 433-2280.

## SUPPLEMENTARY INFORMATION:

In a notice in the FEDERAL REGISTER of August 17, 1976 (41 FR 34908), the Director of the Bureau of Veterinary Medicine offered an opportunity for a hearing on a proposal to withdraw approval of certain NADA's: No. 13-195, Hess & Clark, Division of Rhodia, Inc., 7th and Orange St., Ashland, OH 44805 and No. 13-200, Norwich Pharmacal Co., Division of Morton-Norwich Products, Inc., 13-27 Eaton Ave., Norwich, NY 13815, for the use of nihydrazone (NF-64) in food-producing animals. The basis was that new evidence not available when the applications were approved, evaluated together with the evidence available at the time of approval, shows that nihydrazone is not shown to be safe for use under either the approved or currently labeled conditions of use.

In FR Doc. 76-23620, also in the FEDERAL REGISTER of August 17, 1976 (41 FR 34884), the Director proposed to revoke the appropriate provisions of sections of Chapter I of Title 21 of the Code of Federal Regulations (CFR). Holders of approved NADA's were given until September 16, 1976 to submit requests for a hearing in accordance with § 514.200 (21 CFR 514.200), giving the reasons why approval of the applications should not be withdrawn and providing a well-organized and full-factual analysis of the scientific and other investigational data such holder would be prepared to prove in support of its opposition to the Director's proposal. The time for requesting a hearing and submitting data was subsequently extended to November 16, 1976.

Neither the holders of the NADA's nor any other person filed a written appearance of election as provided by said notice. The failure to file such an appearance constitutes election by such persons not to avail themselves of the opportunity for a hearing.

The Director of the Bureau of Veterinary Medicine, under the Federal Food, Drug, and Cosmetic Act (section 512, 82

Stat. 343-351, (21 U.S.C. 360b)) and under authority delegated to the Commissioner (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.29) finds, on the basis of new evidence not available when the applications were approved, evaluated together with the evidence available at the time of approval, that nihydrazone is not shown to be safe for use under either the approved or currently labeled conditions of use.

Therefore, pursuant to the foregoing finding, approval of NADA's 13-195 and 13-200, and all amendments and supplements thereto, is withdrawn, effective April 8, 1977.

Elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs is issuing an order revoking certain regulations that provide for the use of animal drugs containing nihydrazone alone or in combinations.

Dated: March 25, 1977.

V. D. VAN HOUWELING,  
Director, Bureau of  
Veterinary Medicine.

[FR Doc. 77-10237 Filed 4-7-77; 8:45 am]

[Docket Nos. 76N-0172, 76N-0231, 76N-232, 76N-0233]

## FURAZOLIDONE, ET AL.

Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document gives advanced notice that a public hearing will be held concerning the proposed withdrawal of approval of new animal drug applications for furazolidone, furaltadone, and nitrofurazone.

## FOR FURTHER INFORMATION CONTACT:

Maryn Perez, Bureau of Foods (HFF-101), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-245-1301.

## SUPPLEMENTARY INFORMATION:

In the FEDERAL REGISTER of May 13, 1976 (41 FR 19907), the Director of the Bureau of Veterinary Medicine issued a notice of opportunity for hearing proposing to withdraw approval of new animal drug applications (NADA's) Nos. 9-073, 9-393, 11-016, 11-405, 11-698, 11-810 (formerly FDC-D-281), 12-061, 13-805, and 32-319 for the use of furazolidone (NF-180) in food-producing animals on the grounds that the drug has been shown to induce cancer when ingested by animals and there is no adequate, reliable, and practicable method of analysis available for assuring that no residue of the drug will be found in any edible portion of such animals, as required by section 512(d) (1) (H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d) (1) (H)). In the FEDERAL REGISTER of August 17, 1976 (41 FR 34891), the Director issued notices of opportunity for hearing

proposing to withdraw approval of NADA's Nos. 12-738, 14-283 (formerly FDC-D-283; now Doc. No. 76N-0229) and 85-059 for the use of furaltadone (NF-260); NADA's 13-195 and 13-200 (formerly FDC-D-282; now Doc. No. 76N-0228) for the use of nihydrazone (NF-64); and NADA's Nos. 6-395, 6-475, 6-649, 7-801, 8-129, 8-142, 8-324, 8-410, 8-529, 8-784, 9-013, 9-415, 10-741 and 11-154 (formerly FDC-D-280; now Doc. No. 76N-0230) for the use of nitrofurazone (NF-7) in food-producing animals on the grounds that new evidence not available when the applications were approved, evaluated together with the evidence available at the time of approval, shows that these drugs are not shown to be safe for use under either the approved or currently labeled conditions of use (21 U.S.C. 360b(e) (1) (B)).

In response to these notices, Norwich Pharmacal Co., Division of Morton-Norwich Products, Inc., 13-27 Eaton Ave., Norwich, NY 13815, filed appearances and requested hearings on furazolidone, furaltadone, and nitrofurazone; Hess & Clark, Division of Rhodia, Inc., 7th and Orange St., Ashland, OH 44805, filed appearances and requested hearings on furazolidone and nitrofurazone. Neither Norwich nor Hess & Clark filed appearances or requested a hearing on nihydrazone; Hess & Clark did not file an appearance or request a hearing on furaltadone. Accordingly, in the FEDERAL REGISTER of April 1, 1977 (42 FR 17526), the Director issued an order withdrawing approval of Hess & Clark's NADA for furaltadone, and in this issue of the FEDERAL REGISTER he issued an order withdrawing approval of all NADA's for nihydrazone.

In the course of reviewing the responses submitted by both firms in opposition to the May 13, 1976 notice proposing to withdraw approval of furazolidone, some previously submitted data, which had not been reviewed before, have been discovered. In addition, some previously reviewed data have been reevaluated in light of contemporary scientific and legal standards for evaluating animal drugs. The length of time required for this review has led the Commissioner to conclude, in his discretion, that it is in the public interest to hold a formal evidentiary public hearing on the proposal to withdraw approval of the NADA's for furazolidone, furaltadone, and nitrofurazone. Pursuant to 21 CFR 12.35 (formerly 21 CFR 2.118, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)), a notice of hearing will be published in the FEDERAL REGISTER as soon as practicable. In the meantime, participants in the hearing are encouraged to begin preparation of the material required to be disclosed pursuant to 21 CFR 12.85 (formerly 21 CFR 2.153, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)).

The evidentiary hearing will be open to the public. If, however, the Commissioner finds that portions of the NADA's that serve as the basis for the hearing con-

tain information concerning a method or process that is entitled to protection as a trade secret, that part of the hearing involving such portions will not be public, unless the respondents so specify.

Dated: April 1, 1977.

SHERWIN GARDNER,  
Acting Commissioner  
of Food and Drugs.

[FR Doc. 77-10387 Filed 4-7-77; 8:45 am]

[Docket No. 76N-0407; DESI 8682]

### THYROTROPIN FOR INJECTION

Drugs for Human Use; Drug Efficacy Study Implementation

AGENCY: Food and Drug Administration.

ACTION: Followup notice and opportunity for hearing.

SUMMARY: This notice sets forth the conditions for marketing the drug products described below for the indication for which they continue to be regarded as effective and offers an opportunity for a hearing concerning those indications reclassified as lacking substantial evidence of effectiveness.

DATES: Hearing requests due on or before May 9, 1977.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 8682, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements (identify with NDA number): Division of Metabolism and Endocrine Drug Products (HFD-130), Rm. 14B-03, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC-20), Rm. 4-65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC-18), Rm. 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501) Bureau of Drugs.

### FOR FURTHER INFORMATION CONTACT:

John H. Hazard, Jr., Administrative Compliance Branch (HFD-32), Office of the Assistant Director for Regulatory Affairs, Bureau of Drugs, Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857. (301-443-3650).

### SUPPLEMENTARY INFORMATION:

In a notice (DESI 8682) published in the FEDERAL REGISTER of June 18, 1971 (36 FR 11762), the Food and Drug Administration announced its conclusions that the drug product described below is effective, probably effective, and possibly effective for certain indications. No person has submitted data in support of any of the less-than-effective indications, and those indications are now reclassified to lacking substantial evidence of effectiveness. This notice offers an opportunity for a hearing concerning those indications and sets forth the conditions for marketing the drug product for the indications for which it is regarded as effective. Persons who wish to request a hearing may do so on or before May 9, 1977.

NDA 8-682; Thytropar Sterile Lyophilized Powder containing thyrotropin, Armour Pharmaceutical Co., Division Armour & Co., Greyhound Tower, Phoenix, Ariz. 85077.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications listed in the labeling conditions below. The drug now lacks substantial evidence of effectiveness for the

indications evaluated as probably and possibly effective in the June 18, 1971 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Thyrotropin preparations are in a sterile lyophilized powder form suitable for reconstitution for intramuscular or subcutaneous administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

#### Diagnostic application of thyrotropin.

1. To determine subclinical hypothyroidism or low thyroid reserve.

2. To differentiate between primary and secondary hypothyroidism.

3. To differentiate between primary hypothyroidism and euthyroidism in patients whose thyroid function has been suppressed by the administration of thyroid replacement therapy.

4. To aid in detection of remnants and metastases of thyroid carcinoma.

#### Therapeutic application of thyrotropin.

As an adjunct in the management of certain types of functioning thyroid carcinoma and resulting metastases.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before June 7, 1977, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such product. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

*C. Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a) (5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be

withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before May 9, 1977, a written notice of appearance and request for hearing, and (2) on or before June 7, 1977, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given above) between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82) (recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)).

Dated: April 4, 1977.

J. RICHARD CROUT,  
Director, Bureau of Drugs.

[FR Doc.77-10398 Filed 4-7-77;8:45 am]

Office of Education

STATE STUDENT FINANCIAL ASSISTANCE  
TRAINING PROGRAM

Notice of Closing Date for Receipt of State  
Applications

Notice is hereby given that, pursuant to the authority contained in Section 493C of the Higher Education Act of 1965, as amended (20 U.S.C. 1088b-3), applications are being accepted from the 50 States, the District of Columbia, Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Trust Territory of the Pacific Islands to design and develop State Student Financial Assistance Training Programs. These programs will increase the proficiency of institutional and State financial aid administrators in administering all aspects of student financial assistance.

Applications must be submitted by agencies responsible for State scholarship/grant programs and must be received on or before May 15, 1977, by the Office of Education.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: Dr. Richard L. McVity, Director, State Student Incentive Grant Program (SSIGP), Bureau of Student Financial Assistance, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. An application sent by mail will be considered to be received on time by the State Student Incentive Grant Program if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or, if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.)

B. *Hand delivered applications.* An application to be hand delivered must be

taken to the U.S. Office of Education, State Student Incentive Grant Program, Room 3674, Regional Office Building No. 3, 7th & D Streets SW., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m., except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 4 p.m. on the closing date.

C. *Program information and forms.* Information and application forms may be obtained from the State Student Incentive Grant Program, Bureau of Student Financial Assistance, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

D. *Applicable Regulations.* A Notice of Proposed Rulemaking for the State Student Financial Assistance Training Program is published in this issue of the FEDERAL REGISTER. Applicants are advised to follow the requirements and standards published in the proposed regulations in submitting their applications. If the final regulations contain new or inconsistent requirements or funding criteria, the closing date will be extended to allow applicants who have submitted applications based on the proposed regulations to revise their applications.

(20 U.S.C. 1088b-3.)

(Catalog of Federal Domestic Assistance Number 13.562; State Student Financial Assistance Training Program.)

Dated: April 1, 1977.

WILLIAM F. PIERCE,  
Acting Commissioner of Education.

[FR Doc.77-10135 Filed 4-7-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Request for Amendment

A permit was issued to the Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico, on November 10, 1975, pursuant to the Endangered Species Act of 1973: "May take and transport young and not to exceed 50 adult Colorado River squawfish (*Ptychocheilus lucius*) for purposes of scientific research and propagation."

A notice containing the application for the permit was published in the FEDERAL REGISTER on August 5, 1975 (40 FR 32849), soliciting public comments for a period of 30 days.

A notice of the issuance of the permit was published on March 5, 1976 (41 FR 9576).

Under date of March 15, 1977, a request for significant amendments to the permit has been received from the office of the Regional Director, Albuquerque, New Mexico. Published herewith is a copy of the request for these changes which will be considered as an amendment to this permit. This request is being considered pursuant to § 13.23, Title 50 Code of Federal Regulations (see 39 FR 1162).

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA GEN. REG. NO. 27 (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

# Memorandum

U.S. FISH & WILDLIFE SERVICE  
Region 2, Albuquerque, New Mexico 87103

TO : Director, FWS, Washington, D. C. (WFO)

DATE: March 15, 1977

FROM : Assistant Regional Director (SE)

SUBJECT: Amendment Request for Permit No. PRT 8-225-C

We are requesting an Amendment #4 to the above permit. Willow Beach N.F.H. is currently carrying out propagation activities on the Colorado Squawfish (Ptychocheilus lucius) and razorback sucker (Xyrauchen texanus). The Colorado River Fishes Recovery Team has asked that we expand this work to include the humpback chub (Gila cypha). In addition, a package will be soon coming from this office to list 2 other Colorado River endemic fish species; bonytail chub (Gila elegans) and razorback sucker. Hopefully, in the near future all four of these species will be propagated at Willow Beach and perhaps at Dexter and Hotchkiss N.F.H.s.

We therefore request that Permit No. PRT 8-225-C be amended to read as follows:

Block 11 (D) - Delete: as written  
Amend: to read:

Authorized to conduct the following activities with Colorado (River) squawfish (Ptychocheilus lucius), humpback chub (Gila cypha), and if and when listed, bonytail chub (Gila elegans) and razorback sucker (Xyrauchen texanus), as specified in block 10, for the purposes of scientific research and propagation;

1. May take, transport and rear each of the above four species for the purposes of scientific research and propagation.
2. May transport to the Fish Control Laboratory, Fort Morgan, Colorado, fifteen (15) subadults of each of the above species (per year) and sacrifice them for the purpose of disease determination.
3. May release into suitable waters of the Colorado River basin as specified in Block 10, Colorado Squawfish, humpback chubs, bonytail chubs and razorback suckers, after receiving permission from the State or States to receive the stocking.

Block 11 (F) - Delete: squawfish  
Amend: to read:



The containers in which the fish are shipped must be plainly marked, labeled or tagged giving the names and addresses of the shipper and cosignee with an accurate description of the contents by number and species.

Block 11 (H) - Delete: squawfish  
Amend: to read:

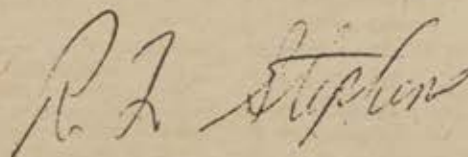
A duplicate of this permit must be attached to the container in which the fish are placed for storage, supervision or care.

Block 11 (I) - Delete: squawfish  
Amend: to read:

The loss, death or destruction of any of the above species shall be reported within 24 hours to the Albuquerque U.S. Fish & Wildlife Service Office (505-766-2091) within 10 days.

We are requesting that the number of fish removed from the wild and numbers restocked in the wild be eliminated from the permit. This seems best left to the discretion of the Regional Director, in conjunction with the State Agencies and the Recovery Team. It seems possible this spring that we may produce as many as 2 million young razorback suckers, and limiting restocking to 3,000 is unrealistic.

As this permit is up for renewal in December of 1977, and becoming somewhat confused with the different amendments, perhaps it would be better to reissue the entire permit now. We will leave this decision to your discretion.



In keeping with the spirit of the Endangered Species Act of 1973 this notice is being published to allow public comment on the request for an amendment. Interested persons may comment on this amendment by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number HRT 8-225-C;

please refer to this number when submitting comments. All relevant comments received on or before May 9, 1977 will be considered.

Dated: April 5, 1977.


DONALD G. DONAHOO,  
Chief, Permit Branch,  
Federal Wildlife Permit Office.

[FR Doc. 77-10379 Filed 4-7-77; 8:45 am]

#### ENDANGERED SPECIES PERMIT Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: University of California, Division of Wildlife and Fisheries, Davis, Calif. 95616. Dr. Dale P. Lott, Chairman of Department.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE		FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION																						
																								
1. APPLICATION FOR (Indicate only one) <input checked="" type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT																								
2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.  To collect addled pelican eggs; to collect eggshell fragments; to salvage and hold injured and dead pelicans; to import brown pelican materials (parts of pelicans found dead, addled eggs, and other materials collected legally in Mexico).																								
3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution to which permit is requested.)  Dr. Daniel W. Anderson Division of Wildlife and Fisheries University of California Davis, California 95616 AC916-752-2108 (home 756-1579)																								
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td><input checked="" type="checkbox"/> MR.   <input type="checkbox"/> MRS.   <input type="checkbox"/> MISS   <input type="checkbox"/> MS.</td> <td>HEIGHT</td> <td>WEIGHT</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> <td>COLOR EYES</td> </tr> <tr> <td>5 February 1939</td> <td>brown</td> <td>blue</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td colspan="2">SOCIAL SECURITY NUMBER</td> </tr> <tr> <td>752-6584</td> <td colspan="2">902-42-1685</td> </tr> <tr> <td colspan="3">OCCUPATION</td> </tr> <tr> <td colspan="3">College Professor, research biologist</td> </tr> </table>				<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT	DATE OF BIRTH	COLOR HAIR	COLOR EYES	5 February 1939	brown	blue	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER		752-6584	902-42-1685		OCCUPATION			College Professor, research biologist		
<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT																						
DATE OF BIRTH	COLOR HAIR	COLOR EYES																						
5 February 1939	brown	blue																						
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER																							
752-6584	902-42-1685																							
OCCUPATION																								
College Professor, research biologist																								
5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OF KIND OF BUSINESS, AGENCY, OR INSTITUTION Teaching/research at the university level in fields of wildlife conservation, research, and management. Research activities are financed by federal and state agencies.																								
6. NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. (752-3576) Dr. Dale F. Lott, Chairman of Dept.																								
7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? (If yes, list license or permit number) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (see attachment)																								
8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? (If yes, list (include name and type of document)) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (see attachment)																								
9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF "individual basis"		10. DESIRED EFFECTIVE DATE January 1977																						
		11. DURATION NEEDED 4 years, with renewal																						
12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (34 CFR 17.122) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.  (see attachment)																								
<b>CERTIFICATION</b>																								
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17 OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE, PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.																								
SIGNATURE (in ink)		DATE																						
Daniel W. Anderson		24 November 1976																						

17.22—Paragraph (a) is the applicable section:

Item (1)—Common Name—California Brown Pelican.—Scientific Name—*Pelecanus occidentalis californicus*.—Number, Age, and Sex—variable, this is impossible to provide. However, up to 200 pre fledging brown pelicans will be banded in California; addled eggs and eggshell fragments (as many as are found) will be collected and analyzed for pesticides; up to 200 carcasses of brown pelicans will be salvaged from dieoffs and beaches; as many injured birds as are found will be examined and turned over to the California Dept. of Fish and Game or their appointed agent; no healthy brown pelicans

will be collected, or handled/trapped, except those to be banded.

Activities—banding (USFWS bands plus colored leg bands); collecting (materials such as carcasses, addled eggs, eggshell fragments); observing (near nesting colonies and loafing groups); importing (any brown pelican materials legally collected in Mexico).

Item (2)—This wildlife is still in the wild.  
 Item (3)—Activities will not cause losses of wild, healthy birds. Applicant has 7 years of experience with the subspecies as a biologist with the USFWS. Reprints of brown pelican publications by the applicant to date are attached for your information (attachment 1).

Item (4)—Not applicable.

Item (5)—All materials will be processed and held at the campus of the University of California at Davis, facilities of the Division of Wildlife and Fisheries Biology. Salvagable materials will be housed at the museum of the institution listed above. Permanent disposition of some materials will be at USFWS approved museums in California. The facilities of the University of California are varied and extensive and impossible to describe in detail here.

Item (6)—Not applicable.

Item (7)—A memo of understanding with California Department of Fish and Game is attached to the original report. A collecting permit is issued to the applicant by the Mexican Departamento de la Fauna Silvestre for research work in Mexico (letters dated October 27, 1976, No. 90-76/097; letter dated January 11, 1977). Permit from the U.S. National Park Service to conduct research on Anacapa Island, California (dated January 28, 1977).

Item (8)—Proposed activities are outlined in detail in the attached research proposals and correspondence (Attachment 2), (i, ii).

(iii)—The proposed activities will help increase our knowledge of this endangered subspecies and provide continuing input for management decisions and continuing monitoring of its status. Hopefully, in time, the California brown pelican can be removed from the endangered species list.

(iv)—Disposition of all materials remaining at the termination of activities will be in accordance with section 17.22(b)(3).

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-574-07; please refer to this number when submitting comments. All relevant comments received on or before May 9, 1977 will be considered.

Dated: April 5, 1977.

DONALD G. DONAHOO,  
 Chief, Permit Branch,  
 Federal Wildlife Permit Office.


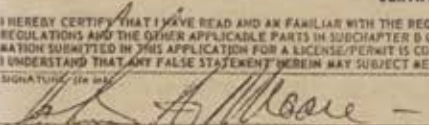
[PR Doc.77-10381 Filed 4-7-77;8:45 am]

#### ENDANGERED SPECIES PERMIT Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: John A. Moore, Director, Audubon Park Zoo, P.O. Box 4327, New Orleans, La. 70118.



DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE  FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		DND NO. 43-11670	
		1. APPLICATION FOR (Indicate only one) <input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT	
3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) Audubon Park Commission Audubon Park Zoo P. O. Box 4327 New Orleans, Louisiana 70118 Mr. John A. Moore, Director Phone: (504) 861-2537		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. To purchase two (2) Hawaiian Geese (endangered species) in interstate commerce in the course of a commercial activity, for breeding in captivity.	
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS. DATE OF BIRTH: _____ COLOR HAIR: _____ COLOR EYES: _____ PHONE NUMBER WHERE EMPLOYED: _____ SOCIAL SECURITY NUMBER: _____ OCCUPATION: _____		5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION Audubon Park Commission Audubon Park Zoo Public Park NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. (504) 861-2537 John A. Moore, Director IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED Louisiana	
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED Audubon Park Commission Audubon Park Zoo New Orleans, Louisiana 70118		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list license or permit number) 4-SC-762	
8. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$ _____		10. DESIRED EFFECTIVE DATE: _____ 11. DURATION NEEDED: _____	
12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 17.22) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION, LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED. Additional information as required under 50 CFR 17.22 attached.			
<b>CERTIFICATION</b>			
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.			
SIGNATURE (IN INK) 		DATE 2/9/77	

crates similar to and equal to I.A.T.A. live animal regulation, fourth edition, February, 1975, Geneva, Switzerland, for waterfowl of like size; (V) No.

(7) Copy of breeding loan agreement attached.

RESUME OF ZOO BIRD CARE AND BIRD PROPAGATION EXPERIENCE OF PAY N. STEELE, CURATOR OF BIRDS, AUDUBON PARK ZOO

Eight years experience as operator of self owned Aviary and bird propagation center in Salome, Arizona. Reared Psittacines, Game Birds, and Waterfowl.

Employed two years in Bird Department of the Phoenix Zoo including one year as head of the Department. Successfully raised several species of birds including waterfowl.

One year Principal Keeper of Birds at the Baltimore Zoo. Experience and breeding success with many species of birds including waterfowl.

Employed 4½ years in the Honolulu Zoo, 2½ years as head bird keeper, approximately 1,000 birds in the collection. Extensive success in the hatching and rearing of many species of birds including Nene Geese and other rare waterfowl.

Two years Curator of Birds at Audubon Park Zoo, New Orleans. Successful propagation of many species of birds including waterfowl.

Summary: Eighteen years experience in Zoo Bird care. Successful propagation of approximately 80 species of birds including Penguins, Ostrich, Rheas, Flamingos, Plovers, Amazons, Macaws, Cockatoos and other Psittacines, Birds of Prey, Brush Turkeys, Crowned Cranes, Crowned Pigeons and other exotic Columbiformes, and over 20 species of Anseriformes including the hatching and rearing of Nene Geese on three occasions while at the Honolulu Zoo.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-665-07; please refer to this number when submitting comments. All relevant comments received on or before May 9, 1977 will be considered.

Dated: April 5, 1977.

DONALD G. DONAHOO,  
Chief, Permit Branch,  
Federal Wildlife Permit Office.

[FR Doc.77-10382 Filed 4-7-77; 8:45 am]

#### THREATENED SPECIES PERMIT Application

Notice is hereby given that the following application for a permit is deemed to have been received under Section 4(d), 16 U.S.C. 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Ernest P. Hase, R.R. No. 1, Box 270, Hager City, Wisconsin 54014.

#### ADDITIONAL INFORMATION REQUIRED

##### SECTION 17.22

(1) Common name—Nene or Hawaiian Goose. Scientific name—*Brania sandvicensis*. Number and description—one (1) male, one (1) female.

The activity sought to be authorized by this application is for the Audubon Park Commission to purchase the above described specimens in interstate commerce for the purpose of zoological exhibition and captive propagation. These birds are currently on loan to Audubon Park.

(2) The birds for which this permit is sought were bred and reared in captivity by the St. Louis Zoological Park in St. Louis, Missouri, whose mailing address is:

St. Louis Zoological Park, Forest Park, St. Louis, Mo., 63110.


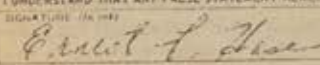
(3) Not applicable.

(4) Hatched at St. Louis Zoological Park.

(5) The birds will be maintained at Audubon Park in the city of New Orleans, Louisiana which park includes 395 acres in the city of New Orleans operated by the Audubon Park Commission. The Zoo exhibits 55 mammal species, 124 bird species, 48 reptile species and has 95 employees. We have a part-time veterinarian and an on-going educational program. The bird department, under whose care these birds will be maintained, has a curator and three (3) animal keepers.

(6) (I) The waterfowl exhibit at Audubon Park, where these birds will be kept, includes a pond (134'6" long by 45' wide), sufficient grazing area and is protected by chain link fencing (photo attached); (II) A resume of Mr. Fay Steele is attached; (III) We will collaborate in maintaining breeding records and a stud book; (IV) Birds were shipped in

DWD NO. 42-1195

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE		1. APPLICATION FOR License <i>By state</i>																
 <p>FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION</p>		<input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT																
		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. interstate purchases for specie expansion  also interstate sales needed for removal of surplus stock.																
3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested):  Ernest F. Hase R.R. 1 Box 270 Hager City, Wisc. 54014  Tele- 715-792-2882		5. IF "APPLICANT" IS A BUSINESS CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION:  Small hobby business																
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <table border="1"> <tr> <td><input checked="" type="checkbox"/> MR   <input type="checkbox"/> MRS   <input type="checkbox"/> MISS   <input type="checkbox"/> MS</td> <td>HEIGHT 6'</td> <td>WEIGHT 205</td> </tr> <tr> <td>DATE OF BIRTH 2/25/35</td> <td>COLOR HAIR Brown</td> <td>COLOR EYES Hazel</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED 612-568-2907</td> <td colspan="2">SOCIAL SECURITY NUMBER 399-30-8079</td> </tr> <tr> <td colspan="3">OCCUPATION Halt house laborer</td> </tr> <tr> <td colspan="3">ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:  None</td> </tr> </table>		<input checked="" type="checkbox"/> MR <input type="checkbox"/> MRS <input type="checkbox"/> MISS <input type="checkbox"/> MS	HEIGHT 6'	WEIGHT 205	DATE OF BIRTH 2/25/35	COLOR HAIR Brown	COLOR EYES Hazel	PHONE NUMBER WHERE EMPLOYED 612-568-2907	SOCIAL SECURITY NUMBER 399-30-8079		OCCUPATION Halt house laborer			ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:  None			NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.  N.A.	
<input checked="" type="checkbox"/> MR <input type="checkbox"/> MRS <input type="checkbox"/> MISS <input type="checkbox"/> MS	HEIGHT 6'	WEIGHT 205																
DATE OF BIRTH 2/25/35	COLOR HAIR Brown	COLOR EYES Hazel																
PHONE NUMBER WHERE EMPLOYED 612-568-2907	SOCIAL SECURITY NUMBER 399-30-8079																	
OCCUPATION Halt house laborer																		
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:  None																		
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED:  Pierce County, Section 24 Twp. 25N., R. 16W		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <i>(If yes, list license or permit number):</i> XX 3-PR-2241																
8. CERTIFIED CHECK OR MONEY ORDER (IF APPLICABLE) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$		9. DESIRED EFFECTIVE DATE 1/1/77																
10. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (SEE W.F.W. 11228) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 16 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED:  50 C. 17.35.		11. DURATION NEEDED: Max. 2 yrs.																
12. CERTIFICATION: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (SEE W.F.W. 11228) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 16 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED:  50 C. 17.35.																		
<b>CERTIFICATION</b>																		
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER 6 OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.																		
SIGNATURE (In ink) 			DATE 10/26/76															

WINDY ACRE GAME FARM, Ernest F. Hase,  
 RR No. 1, Hager City, WI 54014; Phone:  
 715-792-2882

Names of species sought to be covered by permit. 50c 17.33.

**PHEASANTS**

Elliots (*Symaticus ellioti*).  
 Brn eared (*Crossoptilon manto-huricum*).  
 Edward's (*Lophura edwardsi*).

Humes (*Symaticus humiae*).  
 Mikado (*Symaticus mikado*).  
 Swinhoe (*Lophura swinhoii*).  
 White eared (*Crossoptilon crossoptilon*)

(A) Permit is needed for interstate commerce for the purchasing of new blood lines, keeping down inbreeding, and also for the sale of excess birds that are produced annually.

(B) All birds will be located in Wisc., County of Pierce, Section 24, Twp. 25 N.

range 18 in pens. Diagram of pens and (2) two Photographs will be attached to the reverse side of this sheet.

(C) My general experience comes twenty years of raising pheasant, quail, peafowl etc., but never do I purchase a new breed of pheasant before I do a lot of research reading to see if I can adequately raise that bird.

(D) I now participate in the N.P.I.P. which requires blood testing, banding which, in turn demands upon myself to keep a general stud book of all my breeders. If a more extensive stud book is needed I'll cooperate in any way.

(E) All containers used for shipping birds are always picked or built with the bird in mind, whereas the bird is restricted enough where it can't jump up and hurt itself, yet is free to exercise, also to eat and drink, which food and water is available from time mounted in the containers.

(F) All mortalities will be recorded and steps taken to stop recurrences.

(G) I now raise the Elliot and swinhoe and I'll need this permit to enable me to purchase new stock and avoid excessive inbreeding.

(G) If for any reason my activities involving this wildlife is terminated all birds not sold will be donated to the American Game Bird Breeders' Coop. Federation of which I am a member, to be dispersed as they see fit.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Services's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-476-25; please refer to this number when submitting comments. All relevant comments received on or before May 9, 1977, will be considered.

Dated: April 5, 1977.


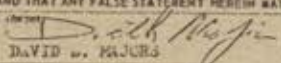
DONALD G. DONAHOO,  
 Chief, Permit Branch,  
 Federal Wildlife Permit Office.

[FR Doc. 77-10380 Filed 4-7-77; 8:45 am]

**THREATENED SPECIES PERMIT  
 Application**

Notice is hereby given that the following application for a permit is deemed to have been received under Section 4 (d), 16 USC 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: David L. Majors, Rt. 1, Box 57, Stevensville, Montana 59870.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE  FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		1. APPLICATION FOR <small>(State only only)</small>																									
		<input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT																									
		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. Captive - self-sustaining populations delivery, receipt, carriage, transportation or shipment in interstate commerce of those species of pheasants listed as CSSP																									
3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested). David L. Majors Rt. 1, Box 57 Stevensville, Montana 59870		4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <table border="1"> <tr> <td><input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.</td> <td>HEIGHT</td> <td>WEIGHT</td> </tr> <tr> <td></td> <td>5 - 8</td> <td>165</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> <td>COLOR EYES</td> </tr> <tr> <td>May 25, 1943</td> <td>Bwn</td> <td>Bwn</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td colspan="2">SOCIAL SECURITY NUMBER</td> </tr> <tr> <td>(406)543-3107</td> <td colspan="2">534 44 2654</td> </tr> <tr> <td colspan="3">OCCUPATION</td> </tr> <tr> <td colspan="3">Sawmill foreman, game bird breeder</td> </tr> </table>		<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT		5 - 8	165	DATE OF BIRTH	COLOR HAIR	COLOR EYES	May 25, 1943	Bwn	Bwn	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER		(406)543-3107	534 44 2654		OCCUPATION			Sawmill foreman, game bird breeder		
<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT																									
	5 - 8	165																									
DATE OF BIRTH	COLOR HAIR	COLOR EYES																									
May 25, 1943	Bwn	Bwn																									
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER																										
(406)543-3107	534 44 2654																										
OCCUPATION																											
Sawmill foreman, game bird breeder																											
5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION		6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED Rt. 1, Box 57 Stevensville, Montana 59870																									
7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <small>(If yes, list license or permit number)</small> PRT 2-143 DN, PRT 2-2, 6-PR-298		8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <small>(If yes, list jurisdictions and type of documents)</small> Montana State Permit No. 757																									
9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$		10. DESIRED EFFECTIVE DATE ASAP																									
11. DURATION NEEDED 2 years		12. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED IS IN 50 CFR 22.22(a) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION, LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.																									
<b>CERTIFICATION</b>																											
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.																											
SIGNATURE (PRINT)		DATE																									
 DAVID L. MAJORS		March 7, 1977																									
<small>U.S. FISH AND WILDLIFE SERVICE            WASHINGTON, D.C. 20240            AND            STEVENSVILLE, MONTANA            59870</small>		<small>U.S. FISH AND WILDLIFE SERVICE            WASHINGTON, D.C. 20240            AND            STEVENSVILLE, MONTANA            59870</small>																									

## INCLOSURE 1

The following is a list of pheasants for which the permit is desired for delivery, receipt, carriage, transportation or shipment in interstate commerce of the same:

Brown eared pheasant, *Crossoptilon mantchuricum*.  
 Edward's pheasant, *Lophura edwardsi*.  
 Elliot's pheasant, *Syrnaticus ellioti*.  
 Mikado pheasant, *Syrnaticus mikado*.  
 Swinhoe's pheasant, *Lophura swinhoei*.

The following is submitted as inclosures as required by 50 CFR 17:

17.33a(1): Provided above.  
 17.33a(2): Provided as inclosure 2.  
 17.33a(3): Provided as inclosure 3.  
 17.33a(4): Provided as inclosure 4.  
 17.33a(5): I ship my birds in reinforced wooden crates (16x21x12) or (19x12x12) designed for either one bird or one pair of birds depending upon their size. These crates are provided with feeding and watering devices for use while in transit. All

crates have foam rubber attached to the top of the crate to prevent damage to the heads of the birds while in transit.

17.33a(6): Provided as inclosure 5.

17.33a(7) (i): The delivery, receipt, carriage, transportation or shipment in interstate commerce of those species of pheasants listed in inclosure 1.

17.33a(7) (ii): I do not plan to terminate my activities in raising birds. If such occurrence should ever happen the disposition of the birds would be in accordance with any applicable federal or state regulations.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Services office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO),

U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-677-25; please refer to this number when submitting comments. All relevant comments received on or before May 9, 1977 will be considered.

Dated: April 5, 1977.

DONALD G. DONAHOO,  
 Chief, Permit Branch  
 Federal Wildlife Permit Office.

[FR Doc. 77-10383 Filed 4-7-77; 8:45 am]

## National Park Service

INDIANA DUNES NATIONAL  
LAKESHORE

## Public Hearings on Special Study

Public hearings on a special study of three areas adjacent to Indiana Dunes National Lakeshore will be held Monday, May 9, 1977, at Beverly Shores Elementary School, Marne Avenue, Beverly Shores, Indiana, and Tuesday, May 10, 1977, at Park Headquarters at U.S. Highway 12 and Kemil Road, Chesterton, Indiana. Both hearings will begin at 7:30 p.m. (CDT). The Act to provide for the establishment of Indiana Dunes (80 Stat. 1309; 16 USC 460u-18) as amended by Public Law 94-549 directs the Secretary of the Interior to study the three areas designated as II-A (NIPSCO property), III-A (Beverly Shores "island") and III-C (U.S. 12 right-of-way), and transmit a report to Congress by July 1, 1977. Interested individuals, representatives of organizations and public officials are invited to express their views in person. Those not wishing to appear may submit written statements which should be filed with the Superintendent, Indiana Dunes National Lakeshore, R.R. 2, Box 139A, Chesterton, Indiana 46304, no later than May 31.

Copies of the study may be reviewed in the Washington Office of the National Park Service, Room 1210, Department of the Interior, 18th and C Streets NW., Washington, D.C.; the Midwest Regional Office of the National Park Service, 1709 Jackson Street, Omaha, Nebraska; or at the office of the Superintendent, Indiana Dunes National Lakeshore, U.S. Highway 12 and Kemil Road, Chesterton, Indiana, on or after April 18. Copies may also be obtained by writing the Superintendent.

Dated: March 31, 1977.

MERRILL D. BEAL,  
 Regional Director,  
 Midwest Region.

[FR Doc. 77-10449 Filed 4-7-77; 8:45 am]

DEATH VALLEY NATIONAL MONUMENT  
Availability of Mining Plan

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Pfizer, Inc., has filed a plan of operations in support of proposed mining activities on lands embraced by mining claim loca-

tions within the Death Valley National Monument. This plan is available for public inspection during normal business hours at the Death Valley National Monument Headquarters, Death Valley, California.

Dated: March 4, 1977.

RICHARD S. RAYNER,  
Acting Superintendent,

Death Valley National Monument.

Dated March 11, 1977.

HOWARD H. CHAPMAN,  
Regional Director,  
Western Region.

[FR Doc. 77-10448 Filed 4-7-77; 8:45 am]

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### SEASONALLY ADJUSTED WEEKLY UNEMPLOYMENT RATES UNDER REGULAR STATE UNEMPLOYMENT COMPENSATION PROGRAMS, 1977

##### Factors for Computation

The Bureau of Labor Statistics announces the 1977 weekly seasonal adjustment factors to be applied to the weekly unadjusted level of claims for regular State unemployment benefits to derive seasonally adjusted data for this series. The weekly seasonally adjusted level of insured unemployment under regular State programs is a major component in the derivation of the 13-week average seasonally adjusted national and State insured unemployment indicator rate which triggers Federal-State extended unemployment compensation payments under the provisions of State laws. The rate of insured unemployment for purposes of determining the beginning and ending of an Extended Benefits period is computed and announced by the U.S. Department of Labor's Employment and Training Administration, Unemployment Insurance Service.

Week ending date:	Factor
Jan. 1	122.7
Jan. 8	129.8
Jan. 15	132.5
Jan. 22	133.3
Jan. 29	128.7
Feb. 5	129.6
Feb. 12	131.5
Feb. 19	132.5
Feb. 26	131.3
Mar. 5	128.8
Mar. 12	127.4
Mar. 19	124.7
Mar. 26	120.2
Apr. 2	117.1
Apr. 9	114.8
Apr. 16	112.7
Apr. 23	109.9
Apr. 30	104.1
May 7	101.3
May 14	99.1
May 21	95.3
May 28	90.7
June 4	92.7
June 11	92.7
June 18	91.4
June 25	88.4
July 2	86.7
July 9	95.2
July 16	95.9

##### Week ending date:

Week ending date:	Factor
July 23	92.9
July 30	89.1
Aug. 6	88.4
Aug. 13	86.0
Aug. 20	83.6
Aug. 27	78.7
Sept. 3	75.8
Sept. 10	78.1
Sept. 17	75.0
Sept. 24	74.2
Oct. 1	72.9
Oct. 8	73.1
Oct. 15	76.4
Oct. 22	75.8
Oct. 29	76.0
Nov. 5	77.5
Nov. 12	81.9
Nov. 19	83.2
Nov. 26	90.9
Dec. 3	94.1
Dec. 10	97.8
Dec. 17	99.1
Dec. 24	102.1
Dec. 31	117.4

Inquiries regarding the contents of this announcement, the methodology for seasonal adjustment of this series, and the revised historical data are to be directed to the address listed below:

U.S. Department of Labor, Bureau of Labor Statistics, Office of Data Analysis, Office of Current Employment Analysis, Room 4808, 441 G Street NW., Washington, D.C. 20212. Attn: Mr. Thomas J. Plewes. Telephone: 202-523-1237.

Signed at Washington, D.C., this 31st day of March 1977.

JULIUS SHISKIN,  
Commissioner of Labor Statistics.

[FR Doc. 77-10479 Filed 4-7-77; 8:45 am]

#### Employment and Training Administration EMPLOYMENT TRANSFER AND BUSINESS COMPETITION

##### 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 calculated to or is likely to result in the transfer from one area to

##### Applications received during the week ending Apr. 1, 1977

Name of applicant	Location of enterprise	Principal product or activity
Wilson's Ice Cream House, Inc.	Dallas, Pa.	Manufacture and sale of ice cream, fast-food outlet, convenience store, and restaurant.
Grenada Steel Industries, Inc.	Grenada, Miss.	Fabrication of structural steel.
Unique Glass, Inc.	Fitzpatrick, Ala.	Manufacture of nonglare glass.
Wesley's Inc.	Rural Hill, N.C.	Printing and selling of business forms and selling of graphic art supplies and equipment.
Lake Moultrie Shores, Inc.	Bonneau, S.C.	Building of marina and sale of recreational lots.
Tanglewood Associates, Inc.	Ridgeway, S.C.	Intermediate nursing care.
Mouell's Rest Home, Inc.	Brookhaven, Miss.	Nursing care to the elderly.
Carter Equipment Co., Inc.	Richland, Miss.	Sales and rentals of heavy equipment.
D. & S. Corp.	Athens, Tenn.	Manufacture of ladies' robes.
Leaf Industries, Inc.	Trussville, Ala.	Manufacture of residential metal furniture and dental industry components.
Wamsutta Mills (tenant of Anderson County Water and Sewer Authority).	Anderson, S.C.	Manufacture of textile greige goods.
Rockome Gardens, Inc.	Accola, Ill.	Theme park and restaurant.
Lewis Distributing Co., Inc.	Cleveland, Wis.	Beer wholesaler.

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 pertaining 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 4th day of April 1977.

ERNEST G. GREEN,  
Assistant Secretary for  
Employment and Training.

Name of applicant	Location of enterprise	Principal product or activity
West Baton Rouge Nursing Home, Ltd.	Brusly, La.	Nursing home services.
Dolphin Corp.	Luling, Tex.	Naphtha and fuel oil.
Big "V" Feeds, Inc.	McAlester, Okla.	Wholesale feed manufacturer and jobber; distributor of agricultural commodities.
Baton Rouge Bagging, Inc.	Port Allen, La.	Bagging of farm products.
Manuel Truck & Equipment Co., Inc.	Eunice, La.	Sales of trucks and other motor vehicles.
Newport Motel	Morgan City, La.	Lodging.
Golden Harvest Corp.	Denham Springs, La.	Nursing home.
Cobb Industrial Corp.	Red River Parish, La.	Manufacture of industrial sand.
Roderick Arms & Tool Corp.	Monett, Mo.	Manufacture of precision parts and tools.
Worland Motel, Inc.	Worland, Wyo.	Motel.
Sumora Development Co.	Goodyear, Ariz.	Construction of a golf course.
Brian Robert Clark	Cottonwood, Ariz.	Bowling center with cocktail lounge, nursery, etc.

[FR Doc.77-10392 Filed 4-7-77; 8:45 am]

### Occupational Safety and Health Administration

#### ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH, SUBCOMMITTEE ON COMPLIANCE

##### Meeting

Notice is hereby given that the Subcommittee on Compliance of the Advisory Committee on Construction Safety and Health, will meet on April 26-27, 1977, starting at 9 a.m. in the Hilton Airport Plaza Inn at the Kansas City, International Airport, the European Consulate Room, Kansas City, Missouri. The meeting is open to the public.

The agenda for this meeting will include a discussion of proposed citation guidelines at multi-employer worksites, and plans for future meetings. Any materials provided to members of the Committee are available for inspection and copying at the Division of Consumer Affairs.

Written data related to Committee activities may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the group and will be included in the record of the meeting.

The Advisory Committee on Construction Safety and Health was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Communications may be mailed to:

Ken Hunt, Office of Public and Consumer Affairs, Department of Labor—OSHA, 3d Street and Constitution Ave. NW., Room N-3635, Washington, D.C. 20210. Phone: 202-523-8024.

Signed at Washington, D.C., this 5th day of April 1977.

EULA BINGHAM,  
Assistant Secretary,  
Occupational Safety and Health.

[FR Doc.77-10475 Filed 4-7-77; 8:45 am]

#### CALIFORNIA STATE STANDARDS

##### Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health, (here-

inafter called Regional Administrator—OSHA) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 1, 1973 notice was published in the FEDERAL REGISTER (38 FR 10717) of the approval of the California plan and the adoption of Subpart K to Part 1952 containing the decision.

The California plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1952.173 of Subpart K sets forth the State's schedule for the adoption of as effective and comprehensive standards as those set forth in Chapter XVII of Title 29 of the Code of Federal Regulations. Accordingly California has promulgated standards comparable to the agricultural standard of 29 CFR Part 1928, Subpart C and revised the standard on temporary labor camps and promulgated it in accordance with applicable State procedures. An interagency agreement has been signed between the California Agriculture & Services Agency and the Department of Housing and Community Development to enforce the temporary labor camp standards in Title 25, Chapter 2 of the California Administrative Code which have been determined to be at least as effective as the temporary labor camp standard of 29 CFR 1910.142. By letters dated January 7, 1976 and March 11, 1977, from Steven A. Jablonsky, Program Manager, California Occupational Safety and Health Administration, to Gabriel J. Gillotti, Regional Administrator, and incorporated as part of the plan, the State submitted proof documents concerning standards equivalent to § 1910.142 and 29 CFR Part 1928, Subpart C. The temporary labor camp standards which are contained in Title 25, Chapter 2 of the California Administrative Code, and the agricultural standards, which are contained in Title 8, Chapter 4 of the California Administrative Code, were promulgated by the State after public hearings. The labor camp permit standard of section 3350 of Title 8, Chapter 4 of the California Administrative Code was promulgated by the State after public hearing on March 23, 1977.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards. The State standards are more specific in several areas, particularly, with respect to Shelter, 29 CFR 1910.142 (b)(1) and Water Supply, 1910.142(c)(2). The detailed standards comparison is available at the locations specified below.

3. *Location of the supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 8470, San Francisco, California 94102; the California Occupational Safety and Health Administration, Room 3052, 455 Golden Gate Avenue, San Francisco, California 94102; and Office of the Directorate of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N-3605, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under § 1953.2 (c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the California plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public notice and participation would be repetitious.

This decision is effective April 8, 1977.

(Sec. 18, Pub. L. 91-956, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at San Francisco, California, this 21st day of March, 1977.

GABRIEL J. GILLOTTI,  
Regional Administrator—OSHA.

[FR Doc.77-10476 Filed 4-7-77; 8:45 am]

#### WASHINGTON STATE STANDARDS

##### Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance

with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

Section 1952.120 through .124 of Subpart F sets forth the State's schedule for the adoption of at least as effective State standards. By letter dated December 29, 1976, from John Hillier, Assistant Director, Industrial Safety and Health to James Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.265, as published in the FEDERAL REGISTER (39 FR 23771) dated June 27, 1974. These standards, which are contained in Chapter 296-78 WAC Safety Standards for Sawmill Operations, were promulgated after public hearings held on April 30, 1974, February 20, 1976, and September 1, 1976.

2. *Decisions.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and accordingly should be approved. The Washington submission expands the scope to include Plywood and Veneer Manufacturing, Waste or Residual Handling, and special coverage for Shake and Shingle Manufacturing, and many additional standards including Lockout and Tag Out and Transportation. The detailed standards comparison is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Technical Data Center, Room N3620, 200 Constitution Avenue N.W., Washington, D.C. 20210.

4. *Public participation.* Section 1953 (c)(1) of this chapter provides that where State standards are identical to or "at least as effective" as comparable Federal standards, and have been promulgated in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are "at least as effective" as the Federal standards, and have been promulgated in accordance with State law, including an opportunity for public comment and/or public hearings, they are approved without an opportunity for further public comment.

This decision is effective April 8, 1977. (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Seattle, Washington this 9th day of March, 1977.

JAMES W. LAKE,  
Regional Administrator, Occupational Safety and Health Administration.

[FR Doc. 77-10477 Filed 4-7-77; 8:45 am]

Office of the Secretary

[TA-W-1535]

BURROUGHS CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1535: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 30, 1976 in response to a worker petition received on December 30, 1976 which was filed on behalf of workers and former workers producing computer memory units at the Piscataway, New Jersey plant of Burroughs Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3368). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the information provided by officials of Burroughs Corporation, the Department of Commerce, the International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof, have increased either actual, or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

Evidence developed in the Department's investigation reveals that the Piscataway, New Jersey plant of Burroughs Corporation produces computer memory units exclusively for use in computer mainframes produced at other Burroughs plants. Burroughs transferred production of its ferrite-core memory sub-assemblies (stacks) to off-shore facilities in 1970. Since then none of these sub-assemblies have been produced at Piscataway. Imports of these sub-assemblies have decreased in 1975 and 1976 as Burroughs has replaced them with integrated circuits. Burroughs has never produced these integrated circuits at its own facilities.

Imports of computer mainframes have been negligible from 1973 through 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of computer mainframes into the U.S. have not increased as required in Section 222 of the Trade Act of 1974. The petition is, therefore, denied.

Signed at Washington, D.C. this 29th day of March 1977.

JAMES F. TAYLOR,  
Director, Office of Management, Administration and Planning.

[FR Doc. 77-10472 Filed 4-7-77; 8:45 am]

[TA-W-1265]

CHARLESTON, SOUTH CAROLINA PLANT OF AIRCO, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1265: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 10, 1976, in response to a worker petition received on that date which was filed by the United Steelworkers of America, Local Union 4161 on behalf of workers and former workers producing high carbon ferrochrome at the Charleston, S.C. plant of Airco, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53079). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Airco, Inc., the parent firm of the Charleston, S.C. plant, its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

#### SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers fell 31 percent in 1975 compared to 1974 and declined 45 percent in the first quarter of 1976 compared to the first quarter of 1975. Employment declined 5 percent in the January through November period of 1976 compared to the like period of 1975.

In 1975, workers increased production for inventory and were assigned duties around the plant unrelated to the production of ferrochrome as the plant sought to maintain its work force during a period of declining orders. Major layoffs occurred in September and November of 1975.

#### SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales fell 61 percent in units and 38 percent in value in 1975 compared to 1974. Sales continued to decline 5 percent in units and 31 percent in value in the first quarter of 1976 compared to the first quarter of 1975 and then increased 117 percent in units and 72 percent in value in the second quarter of 1976 compared to the second quarter of 1975. Sales increased 67 percent in units and 20 percent in value in the January through November period of 1976 compared to the like period of 1975.

Production decreased 53 percent in 1975 compared to 1974. Production continued to decline 25 percent in the first quarter of 1976 compared to the first quarter of 1975 and then increased 114 percent in the second quarter of 1976 compared to the second quarter of 1975. Production rose 62 percent in the January through November period of 1976 compared to the like period of 1975.

#### INCREASED IMPORTS

Imports of high carbon ferrochrome increased in every year from 1972 through 1975 when compared to the previous year. Imports increased 122 percent in 1975 compared to 1974 and then decreased 39 percent and 54 percent, respectively, in the first and second quarters of 1976 when compared to the respective quarters of 1975. In the January-October period of 1976 imports in-

creased 28 percent when compared to the same period of 1975.

The ratio of imports to domestic production increased from 54.1 percent in 1974 to 220.3 percent in 1975, rose from 154.0 percent in first quarter of 1975 to 174.7 percent in the first quarter of 1976, but declined from 270.3 percent in the second quarter of 1975 to 85.2 in the second quarter of 1976. The ratio of imports to domestic production decreased from 215.0 percent in the January-October period of 1975 to 118.9 percent in the like period of 1976.

#### CONTRIBUTED IMPORTANTLY

Customers surveyed indicated they decreased purchases of ferrochrome from Airco, Inc. as imported ferrochrome accounted for an increasing percentage of their total purchases.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with high carbon ferrochrome produced at the Charleston, S.C. plant of Airco, Inc. contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Charleston, S.C. plant of Airco, Inc. totally or partially separated from employment on or after October 10, 1975 and before March 31, 1976 are certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated on or after March 31, 1976 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 29th day of March 1977.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration and Planning.

[FR Doc.77-10473 Filed 4-7-77;8:45 am]

#### MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS

##### Comprehensive Employment and Training Programs

##### Correction

In FR Doc. 46124, vol. 42, no. 43—Friday, March 4, 1977, dollar amounts for grants which were awarded in the States of Connecticut, Iowa, Maryland, Rhode Island, and Virginia were printed incorrectly. The correct figures are:

Connecticut.....	New England Farmworkers Council Inc.	8540,681
Iowa.....	Migrant Action Program.....	1,200,200
Maryland.....	Migrant and Seasonal Farmworkers, Inc.	448,971
Rhode Island.....	New England Farmworkers Council, Inc.	36,899
Virginia.....	Migrant and Seasonal Farmworkers, Inc.	1,099,322

Signed at Washington, D.C. this 23d day of March 1977.

PAUL A. MAYRAND,  
Chief, Division of  
Farmworker Programs.

[FR Doc.77-10480 Filed 4-7-77;8:45 am]

[TA-W-1348]

#### TAYLOR FORGE DIVISION, GULF AND WESTERN INDUSTRIES

##### Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1348; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 223 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel forged flanges at the Ackerman, Mississippi plant of the Taylor Forge Division, Gulf and Western Industries, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55605). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Taylor Forge, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

#### SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average annual employment of production workers at the Ackerman plant decreased 4.3 percent in the fourth quarter of 1975 compared to the like quarter of 1974. Employment declined 48.6 percent from 1975 to 1976.

#### SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales data was not made available. Annual production of flanges at the Ackerman plant declined 59.1 percent in quantity in the fourth quarter of 1975 compared to the like period in 1974.

Production declined 49.1 percent in quantity in 1976 compared to 1975.

#### INCREASED IMPORTS

Imports of carbon and stainless forged steel flanges decreased from 23.9 million pounds in 1971 to 23.1 million pounds in 1972 then decreased to 12.7 million pounds in 1973. Imports increased to 45.0 million pounds in 1974. Imports increased to 104.5 million pounds in 1975. Imports decreased 51.2 percent in the first 9 months of 1976 compared to the like period in 1975, from 84.9 million pounds to 41.4 million pounds.

The ratio of imports to domestic production of carbon and stainless steel forged flanges increased from 14.7 percent in 1971 to 15.0 percent in 1972, then decreased to 9.3 percent in 1973. The ratio increased to 31.4 percent in 1974 and 74.3 percent in 1975. The ratio of imports to domestic production of carbon and stainless steel forged flanges decreased in the first 9 months of 1976 compared to the like period in 1975; from 77.5 percent to 65.5 percent.

The import penetration of carbon and stainless steel forged flanges increased dramatically from 1974 to 1975, from 31.4 percent to 74.3 percent. The volume of imports increased 132 percent in 1975 compared to 1974, from 45.0 million pounds to 104.5 million pounds.

In the first 9 months of 1976 compared to the like period in 1975, the volume of imports declined 51.2 percent while the import to production ratio declined from 77.5 percent to 65.5 percent.

The import to production ratio in 1975 and in the first 9 months of 1976 is more than double the ratio of any other year between 1971 and 1974. The import to production ratio in the first 9 months of 1976 is 126.3 percent greater than the average yearly ratio of imports to production for the period 1971 through 1975.

#### CONTRIBUTED IMPORTANTLY

Customers of Taylor Forge have indicated that they reduced purchases from Taylor Forge and increased purchases of imported flanges. The price differential between domestic and imported flanges was the factor cited as the reason for the switch from Taylor Forge to foreign manufacturers.

#### CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with forged steel flanges produced by the Ackerman, Mississippi plant of the Taylor Forge Division, Gulf and Western Industries, Inc. contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Ackerman, Mississippi plant of the Taylor Forge Division of Gulf and Western Industries, Inc. who became totally or partially separated from employment on or after November 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of March 1977.

JAMES F. TAYLOR,  
Director, Office of Management,  
Administration and Planning.

[FR Doc.77-10474 Filed 4-7-77;8:45 am]

### NATIONAL SCIENCE FOUNDATION

#### ADVISORY PANEL FOR CHEMISTRY Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Chemistry.  
Date and time: April 28 and 29, 1977; 9 a.m. to 5 p.m. each day.

Place: Room 545, National Science Foundation, 1800 G St. NW., Washington, D.C.  
Type of meeting: Part open, Part closed.

Contact person: Dr. Richard S. Nicholson, Division Director for Chemistry, Room 340, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4262.

Purpose of panel: To provide advice and recommendations concerning support for research in chemistry.

Agenda: April 28, 9 a.m. to 4 p.m.—Open Session. Discussion of topics of concern to the Chemistry Division, including the status of the National Resource for Computational Chemistry, the recent review of chemistry division programs, Foundation policies concerning equipment, and procedures for post-grant evaluation.

4 p.m. to 5 p.m.—Closed Session. For review and evaluation of specific proposals.

April 29, 9 a.m. to 5 p.m.—Open Session. Continuation of topics discussed on April 28, with remarks and presentations by NSF staff on the FY 78 budget, as well as other topics of interest to the Panel and the Foundation.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine 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 such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,  
Acting Committee  
Management Officer.

APRIL 4, 1977.

[FR Doc.77-10373 Filed 4-7-77;8:45 am]

### ADVISORY PANEL FOR COMPUTER SCIENCE AND ENGINEERING, AD HOC SUBCOMMITTEE ON THE SPECIAL PROJECTS PROGRAM

#### Part Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Computer Science and Engineering Ad Hoc Subcommittee on the Special Projects Program.

Date: April 25 and 26, 1977.

Time: 9 a.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street NW., Washington, D.C.  
Type of meeting: Part open—Open April 25, (9 a.m.—12 noon) April 26 (9 a.m.—3 p.m.); Closed April 25 (1 p.m.—5 p.m.).

Contact person: Mr. Kent K. Curtis, Head, Computer Science Section, telephone: 202-632-7346. Anyone who plans to attend this meeting should notify Mr. Curtis no later than April 22, 1977.

Summary minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of advisory panel: To provide advice and recommendation concerning support for research in computer science and engineering.

Agenda: Will include the following discussions and presentations:

#### APRIL 25

9—Introductory Remarks.

9:15—Brief report on Computer Science and Engineering programs, Head, Computer Science Section.

9:30—Review of the Special Projects Program.

Noon—Recess.

1—Review and discussion of specific Special Projects Program proposals (closed).

#### APRIL 26

9—Review of the Special Projects Program, continue.

Noon—Recess.

1—Continuation of morning's discussion.

3—Adjourn.

Reason for closing: The proposals 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. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine 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 such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,  
Acting Committee  
Management Officer.

APRIL 4, 1977.

[FR Doc.77-10372 Filed 4-7-77;8:45 am]

### FEDERAL SCIENTIFIC AND TECHNICAL INFORMATION MANAGERS

#### Meeting

The next meeting of the Federal Scientific and Technical Information Managers will be held on Wednesday, April 13, 1977, from 9:30 a.m.—12 noon, at the National Archives and Records Service, Conference Room 105. Please enter through the Pennsylvania Avenue entrance. The theme of this meeting will be "National Archives and Machine-Readable STI Records."

These meetings, sponsored by the National Science Foundation, provide a forum for the interchange of information concerning common problems and coordination in the areas of Federal scientific and technical information and communications.



These meetings are designed solely for the benefit of Federal employees and officers, and do not fall under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463). However, this meeting is believed to be of sufficient importance and interest to the public to be announced in the FEDERAL REGISTER.

Any persons wishing to attend this meeting or requiring further information should notify Mr. Andrew A. Aines, Division of Science Information, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, telephone: (202) 632-5836.

LEE G. BURCHINAL,  
Director,  
Division of Science Information.

APRIL 4, 1977.

[FR Doc.77-10393 Filed 4-7-77;8:45 am]

## NUCLEAR REGULATORY COMMISSION

### ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

#### Meeting

The meeting notice for the subject meeting to be held on April 7-9, 1977, (published on March 23 and 24, 1977, volume 42, No. 56 and volume 42, No. 57) is revised as detailed below. This revision involves the scheduling of one session not previously announced, the scheduling of another session and cancellation in part of one other agenda item.

THURSDAY, APRIL 7, 1977

6:30 p.m.-7 p.m.: Executive Session (closed)—Discuss proposed ACRS comments regarding proposed Authorization Legislation for FY-1978 ACRS activities. The ACRS office was informed on April 4, 1977 that the proposed legislation provided for the implementation of a fellowship program to support ACRS activities. On April 5, 1977, the ACRS was asked to supply comments as soon as possible on this legislative proposal. In light of the timing of these events a meeting on this subject could not have been scheduled when the April 7-9 meeting was first noticed.

FRIDAY, APRIL 8, 1977

9 a.m.-10:30 a.m.: Executive Session (closed)—Prepare ACRS reports on:

Cherokee Nuclear Plant  
Perkins Nuclear Plant

This was previously announced as scheduled for 5 p.m.-6:30 p.m. on Friday April 8, 1977. It has been rescheduled due to cancellation of the meeting with the NRC Staff on review of the Federal/State Program for Regulation of Commercial Low-Level Waste Burial Grounds which was to have taken place during this same period.

I have determined that in accordance with subsection 10(d) of Pub. L. 92-463 that it is necessary to close the portion of the meeting at which the ACRS will discuss the proposed legislation and formulate its comments thereon to avoid premature disclosure of information which would significantly frustrate proposed Committee/agency action (5 U.S.C. 552b.(c) (9) (B)). Separation of factual

information and information considered exempt from disclosure under Exemption (9) (B) during this portion of the meeting is not considered practical.

Dated: April 6, 1977.

JOHN C. HOYLE,  
Advisory Committee  
Management Officer.

[FR Doc.77-10520 Filed 4-7-77;8:45 am]

## OFFICE OF MANAGEMENT AND BUDGET

### PRIVACY ACT OF 1974 Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period March 21, 1977 through April 1, 1977 the Office of Management and Budget received the following reports on new (or revised) systems of records.

#### DEPARTMENT OF JUSTICE

##### System name:

Immigration and Naturalization Service Index System.

##### Report date:

March 11, 1977.

##### Point-of-contact:

Mr. Harry L. Gastley, Administrative Counsel, Room 1121, Department of Justice, Washington, D.C. 20530.

##### Summary:

The report proposes to alter the subsystem "centralized index and records relating to but not limited to, aliens lawfully admitted for permanent residence and United States citizens" by providing for access via cathode-ray terminals.

#### DEPARTMENT OF DEFENSE

##### System name:

Military Personnel Data File.

##### Report date:

March 17, 1977.

##### Point-of-contact:

Mr. Cavaney, Defense Privacy Board, Room 5H023 Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20314.

##### Summary:

The proposed system "will maintain a consolidated joint personnel file \* \* \* which will save time and improve efficiency in the personnel management of the personnel assigned for duty with the U.S. Readiness Command (USREDCOM) \* \* \*"

#### DEPARTMENT OF COMMERCE

##### System name:

Users of Public Search Room of the Patent and Trademark Office.

##### Report date:

March 17, 1977.

#### Point-of-contact:

Mr. Joseph O. Smiroldo, Director, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

#### Summary:

A new system of records is proposed "to protect patent documents from unauthorized removal from the search room \* \* \*"

#### NATIONAL SCIENCE FOUNDATION

##### System name:

Roster and Surveys of Doctorate Holders in the U.S.

##### Report date:

March 18, 1977.

##### Point-of-contact:

Mr. Herman Fleming, NSF Privacy Act Officer, National Science Foundation, Washington, D.C. 20550.

##### Summary:

The report proposes a new system of records "from which sample subpopulations may be selected for manpower surveys."

#### DEPARTMENT OF JUSTICE

##### System names:

(1) Employee Travel Vouchers and Individual Earnings Records; (2) Employee Health Records; (3) Time Utilization Recordkeeping System.

##### Report date:

March 23, 1977.

##### Point-of-contact:

Mr. Harry Gastley, Administrative Counsel, Room 1121, Department of Justice, Washington, D.C. 20530.

##### Summary:

The report includes two previously unreported systems and one new system, all used for internal administration of the Federal Bureau of Investigation.

#### FEDERAL ENERGY ADMINISTRATION

##### System names:

(1) Personnel Records and Management Information System; (2) Payroll System; (3) Accounts Payable Financial; (4) Accounts Receivable Financial; (5) Employee Travel Records; (6) Minority Group Data File; (7) Mailing Lists for Requesters of Energy Related Information.

##### Report date:

March 25, 1977.

##### Point-of-contact:

Mr. Furman Layman, Federal Energy Administration, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

##### Summary:

The report proposes alteration of the seven systems by the procurement of additional computer support services.

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### System names:

(1) Mortgage Insurance Accounting System; (2) Consumer Complaint Handling System.

##### Report date:

March 29, 1977.

##### Point-of-contact:

Mr. Harold Rosenthal, Departmental Privacy Act Officer, Department of Housing and Urban Development, Washington, D.C. 20410.

##### Summary:

The first system is a proposed consolidation and automation of several existing systems of records; the second is a proposed new system for tracking individual consumer complaint actions.

VELMA N. BALDWIN,  
Assistant to the Director  
for Administration.

[FR Doc.77-10635 Filed 4-7-77;8:45 am]

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13417; File No. SR-MSE-77-7]

### MIDWEST STOCK EXCHANGE, INC.

#### Self-Regulatory Organizations; Proposed Rule Change

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 March 28, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

#### STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

##### ARTICLE XXV

##### "NEXT PROPER SALE"

**Rule 10.** As to certain stocks dually listed on this Exchange and on another national securities exchange in the State of New York and which stocks have been designated as being in the dual trading system, orders will be accepted for execution as an odd lot based on the last New York sale in effect at the time the order is presented at the specialist post, provided the order is for a number of shares less than the full lot in said stock. An odd lot as part of an order involving a round lot, shall be filled on the basis of the full lot price whether such full lot is executed on Midwest or on another exchange; in such case the order shall be marked "on sale."

Odd lot orders which are entered during trading halt situations will be executed based on the reopening price in the New York market.

##### EXECUTION TIME

**Rule 16.** Odd-lot orders in the dual trading system received before 9 a.m. shall be executed on the opening sale in the New York market.

#### STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rules changes is as follows:

The purpose of the proposed rule change (Article XXV, Rule 10) is to effect a change in execution procedure for dual issue odd lot market orders from a next sale basis to a last sale basis.

The purpose of the proposed change in Article XXV, Rule 16, is to eliminate a procedure which is unique to the existing next sale execution system but is not applicable to the proposed procedure.

Current execution procedures require that odd-lot market orders in dual issues be executed on the NYSE sale occurring two (2) minutes subsequent to the order's entry on the MSE Floor. On occasion this procedure has caused unnecessary delays in report turnaround time due to the additional handling necessitated by the two (2) minute holding period.

It is felt that implementation of a last sale pricing procedure will enable a firm to receive reports of MSE market order odd-lot executions within a very narrow time frame.

Therefore, the proposed rules changes promote just and equitable principles of trade and remove impediments to the

perfection of the mechanism of a free and open market.

Comments were solicited from twenty-five member firms who place significant odd lot business on the Midwest Stock Exchange. The majority of those firms responding were in favor of the proposed rule change.

The Midwest Stock Exchange, Incorporated believes that no burdens have been placed on competition.

On or before May 13, 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 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 refer to the file number referenced in the caption above and should be submitted within twenty-one days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary.

MARCH 30, 1977.

[FR Doc. 77-10467 Filed 4-7-77; 8:45 am]

[Rel. No. 9704/April 1, 1977]

#### THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK AND THE MONY VARIABLE ACCOUNT-A

#### Application Pursuant to the Investment Company Act for an Order of Exemption

APRIL 1, 1977.

Notice is hereby given that The Mutual Life Insurance Company of New York ("MONY"), a New York mutual life insurance company, and MONY Variable Account-A ("VA-A"), 1740 Broadway, New York, New York 10019, 812-3910, a separate account of MONY registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company (hereinafter collectively referred to as "Applicants"), filed an application on February 9, 1976 and amendments thereto on February 4, and March 31, 1977, pursuant to Section 6(c) of the Act

for an order exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

MONY established VA-A in 1968, pursuant to the provisions of Section 227 of the New York Insurance Law, for the purpose of providing an investment medium for certain variable annuity contracts. The application considers only VA-A's Individual Multiple Payment and Group Tax-Deferred Variable Annuity Contracts ("Contracts") which are eligible for federal tax-deferred treatment under Section 403(b) of the Internal Revenue Code of 1954, as amended. MONY, which acts as the principal underwriter of the variable annuity contracts participating in VA-A, is a registered broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees on Optional Retirement Program ("Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new Section 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System ("System") requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further

stated that the prohibitions of Section 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that notwithstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract other wise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

*Sections 27(c)(1), 22(e) and 27(d)*

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, for such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with Section 51.358 as it pertains to (i) redemption values under Contracts issued to participants in the Program subsequent to the date of such exemptive order and (ii) redemption values under Contracts issued prior thereto but attributable to payments made subsequent to the date of such order.

Applicants assert that if such exemptions are not granted, persons participating in the Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one

of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the State's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) the limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the State of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each Prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, Applicants will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market specifically to bring this restriction to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 26, 1977, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of

such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following April 26, 1977, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority,

GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc. 77-10439 Filed 4-7-77; 8:45 am]

[Release No. 34-13413; File No. SR-NYSE-77-9]

**NEW YORK STOCK EXCHANGE, INC.**

**Self Regulatory Organizations; Filing of, and Order Approving, Proposed Rescission of Rules**

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 March 24, 1977, the above-mentioned self-regulatory organization (New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005), filed with the Securities and Exchange Commission proposed rescission of rules as follows:

**STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RESCISSIONS**

The text of the proposed rescission is attached as Exhibit I-A.

**PURPOSE OF THE PROPOSED RESCISSION**

The purpose of the rescission is to eliminate the foreign membership and control restrictions which, according to the SEC, appear to be inconsistent with the Act. The amendments remove the citizenship requirement for a member from Article IX, Sec. 2 of the Constitution and Rule 301.10 and delete the restriction on noncitizen participation in member organizations from Article IX, Sec. 7(k) of the Constitution and Rule 314.11.

**BASIS UNDER THE ACT**

(i) The proposed amendments will better enable the Exchange to carry out the purposes of the Act as stated by the SEC.

(ii) The proposed amendments are consistent with Section 6(b)(2) of the Act in that they will remove restrictions to becoming a member or a person associated with a member.

(iii) Is inapplicable.

(iv) Is inapplicable.

(v) They are also consistent with Section 6(b)(5) of the Act in that they eliminate restrictions against brokers and dealers based on citizenship and foreign ownership.

(vi) Is inapplicable.

(vii) Is inapplicable.

(viii) Is inapplicable.

**COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGES**

No comments were solicited or received with respect to the subject amendments.

**BURDEN ON COMPETITION**

The proposed rule rescission will not impose any burden on competition.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street 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 refer to the file number referenced in the caption above and should be submitted on or before April 29, 1977.

The Commission finds that the proposed rule rescissions are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

In Securities Exchange Act Release No. 12157 (Mar. 2, 1976),<sup>1</sup> the Commission commenced a general inquiry, pursuant to Section 31(b) of the Securities Exchange Act Amendments of 1975, with respect to rules of national securities exchanges relating to membership and association with members. In particular, the Commission questioned the consistency of the above-mentioned rules with Sections 6(b)(2), 6(b)(5), and 6(b)(8) of the Act, 15 U.S.C. 78f(b)(2), (5), and (8). Subsequently, in disapproving proposed NYSE Rule 309, which would have barred from NYSE membership foreign controlled organizations except where there was "mutual nondiscrimination," the Commission recognized that its reasoning also led to the conclusion that the above-mentioned rules were inconsistent with the Act.<sup>2</sup> Accordingly, the Commission finds good cause for approving the proposed rescission prior to the thirtieth day after the date of publication of notice of filing of SR-NYSE-77-9.

<sup>1</sup> 41 FR 10662 (Mar. 22, 1976).

<sup>2</sup> See Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rescission referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,  
Secretary

MARCH 30, 1977.

**EXHIBIT I-A.—Text of Proposed Rescission**

(Deleted language in brackets [ ]; new language in *italics*)

**PROPOSED AMENDMENTS TO CONSTITUTION**

**ARTICLE IX**

**MEMBERSHIP—ALLIED MEMBERSHIP**

**MEMBER FIRMS—MEMBER CORPORATIONS**

**Sec. 2.—Eligibility.**

To be eligible for election as a member of the Exchange, a person must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business [and a citizen of the United States]; any person elected shall have all the rights and privileges and shall be under all the duties and obligation of a member of the Exchange in accordance with the Constitution.

**Sec. 7.—Approval of Partnerships, Corporations, Allied Members and Approved Persons.**

[(k) No member firm or member corporation shall have as a parent any party other than a citizen of the United States or Canada or a corporation or partnership created or organized under the laws of the United States or Canada, or any State or Province thereof.]

**PROPOSED RESCISSION OF RULES**

**Rule 301 Proposed Transfer of Membership**

**Rule 301.10 Age [and citizenship]**

An applicant for membership in the Exchange must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which the applicant conducts business [and a citizen of the United States]

(Art. IX, Sec. 2, Para. 1402).

**Rule 314 Interest in Business**

[11 Interest of non-citizen participants. Neither the interest in capital or profit of a member organization, owned by all persons as a group who are not United States or Canadian citizens, shall exceed 45%.]

[FR Doc. 77-10465 Filed 4-7-77; 8:45 am]

**PHILADELPHIA STOCK EXCHANGE**

**Atlas Corp.; Application for Unlisted Trading Privileges and Opportunity for Hearing**

APRIL 1, 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 trad-

ing 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:

Atlas Corporation, "New" Common Stock, \$1 Par Value, File No. 7-4928.

Upon receipt of a request, on or before April 17, 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 the 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. 77-10452 Filed 4-7-77; 8:45 am]

**PHILADELPHIA STOCK EXCHANGE**

**Best Products Co., Inc., and General Exploration Co.; Applications for Unlisted Trading Privileges and Opportunity for Hearing**

APRIL 1, 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:

Best Products Co., Inc., Common Stock, \$1 Par Value, File No. 7-4931.  
General Exploration Company, Common Stock, \$1 Par Value, File No. 7-4932.

Upon receipt of a request, on or before April 17, 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.77-10454 Filed 4-7-77;8:45 am]

#### PHILADELPHIA STOCK EXCHANGE

##### Blue Bell Inc.; Application for Unlisted Trading Privileges and Opportunity for Hearing

APRIL 1, 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:

Blue Bell Inc., Common Stock, \$3.33 $\frac{1}{2}$  Par Value, File No. 7-4929.

Upon receipt of a request, on or before April 17, 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.77-10451 Filed 4-7-77;8:45 am]

#### PHILADELPHIA STOCK EXCHANGE

##### Coca-Cola Bottling Company of New York, Inc.; Application for Unlisted Trading Privileges and Opportunity for Hearing

APRIL 1, 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:

Coca-Cola Bottling Company of New York, Inc. (The), Common Stock, \$.25 Par Value, File No. 7-4930.

Upon receipt of a request, on or before April 1, 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.77-10453 Filed 4-7-77;8:45 am]

#### PHILADELPHIA STOCK EXCHANGE

##### Grolier Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 1, 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:

Grolier Incorporated, Common Stock, \$.50 Par Value, File No. 7-4926.

Upon receipt of a request, on or before April 17, 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.77-10450 Filed 4-7-77;8:45 am]

#### PHILADELPHIA STOCK EXCHANGE

##### Pioneer Electronic Corp.; Application for Unlisted Trading Privileges and Opportunity for Hearing

APRIL 1, 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:

Pioneer Electronic Corporation, American Depository Receipts, 50 Yen Par Value (each American Depository Receipts represents 2 common shares), File No. 7-4927.

Upon receipt of a request, on or before April 1, 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.77-10455 Filed 4-7-77;8:45 am]

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1288; Amdt. No. 1]

### VIRGINIA

#### Declaration of Disaster Loan Area

The above numbered Presidential Declaration (See 42 FR 8253), is amended by extending the date for physical damage until the close of business on April 28, 1977, and for economic injury until the close of business on November 28, 1977.

Dated: March 31, 1977.

ROGER H. JONES,  
*Acting Administrator.*

[FR Doc.77-10441 Filed 4-7-77;8:45 am]

## INTERSTATE COMMERCE COMMISSION

[Notice No. 363]

### ASSIGNMENT OF HEARINGS

APRIL 5, 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 115452 Sub 4, Husband Transport Limited now being assigned June 6, 1977 (1 week) at Buffalo, New York in a hearing room to be later designated.

MC 138762 Sub 1, Municipal Tank Lines Limited now being assigned June 13, 1977 (1 week) at Buffalo, New York in a hearing room to be later designated.

MC 107012 (Sub-No. 229), North American Van Lines, Inc., now being assigned for continued hearing on May 17, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 19227 (Sub-232), Leonard Bros. Trucking Co., Inc.; MC 42011 Sub-31), D. Q. Wise & Co., Inc.; MC 74321 (Sub-127), B. F. Walker, Inc.; MC 83835 (Sub-136), Walen Transportation, Inc.;

MC 93318 (Sub-18), Joe D. Hughes, Inc.; MC 106407 (Sub-31), T. E. Mercer Trucking Co.; MC 106644 (Sub-234), Superior Trucking Company, Inc.; MC 107993 (Sub-51),

J. J. Willis Trucking Company; MC 109064 (Sub-32), Tex-O-Ka-N Transportation Company, Inc.; MC 116817 (Sub-22), E. L. Farmer & Company; MC 113459 (Sub-108), H. J. Jeffries Truck Line, Inc.; MC 115603 (Sub-13), Turner Bros. Trucking Company, Inc. and MC 119774 (Sub-91), Eagle Trucking Company, now being assigned May 9, 1977 (2 weeks), at The Whitehall Hotel, 1700 Smith Street, Cullen Center, Houston, Texas and continued to May 23, 1977 (1 week), at The Fairmont Mayo Hotel, 115 West 5th Street, Tulsa, Oklahoma.

MC-C 8826, Agricultural Transportation Association of Illinois, Charles Mansfield, Marvin S. Mason, Lyle C. Becker, Robert Klopp, Freeman L. Vaughn, Frank M. Cavanaugh and A. R. Schertz—Investigation of Operations and Practices now assigned May 9, 1977 at Chicago, Illinois is cancelled and reassigned for pre-hearing conference at the Offices of the Interstate Commerce Commission in Washington, D.C. on May 10, 1977.

MC 101188 Sub 14, Arledge Transfer, Inc. now assigned April 6, 1977 at Des Moines, Iowa is postponed indefinitely.

MC-C-9433, Ace Lines, Inc.—Investigation and Revocation of Certificates, now assigned May 3, 1977, at Kansas City, Mo. will be held in Room 609, Federal Office Building, 911 Walnut Street.

MC 119777 (Sub-No. 332), Ligon Specialized Hauler, Inc., now assigned May 5, 1977, at Kansas City, Mo. will be held in Room 609, Federal Office Building, 911 Walnut Street.

MC 95540 (Sub-No. 966), Watkins Motor Lines, Inc., now assigned May 6, 1977, at Kansas City, Mo. will be held in Room 609, Federal Office Building, 911 Walnut Street.

AB 102, Missouri-Kansas-Texas Railroad Co. Abandonment Between Bartlesville and Oklahoma City in Osage, Pawnee, Payne, Lincoln, Logan and Oklahoma and P.D. 28210, Missouri-Kansas-Texas Railroad Co.—Trackage Rights—Over Chicago, Rock Island & Pacific Railroad Co. Between McAlester and Oklahoma City, Okla. now assigned May 9, 1977 at Oklahoma City, Okla. will be held in Room 414, Old Post Office Building, 215 NW 3rd.

ROBERT L. OSWALD,  
*Secretary.*

[FR Doc.77-10463 Filed 4-7-77;8:45 am]

[AB 19 (Sub-No. 33)]

### BALTIMORE AND OHIO RAILROAD CO. Abandonment of "Bowling Green Branch"

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by The Baltimore and Ohio Railroad Company of its Bowling Green Branch between Tontogany and North Baltimore, a distance of 19.14 miles, in Wood County, Ohio, 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 because no definitive industrial development plans requiring continuation of rail service by the applicant over the

subject line have been formulated, abandonment will not have any serious impact on rural or community development. It was also concluded that abandonment will not adversely affect the Wood County Courthouse and Jail, which is listed on the National Register of Historic Places, nor will it adversely affect any Ohio endangered animal species. Due to the relatively low volume of traffic handled on this line, abandonment and the subsequent diversion of traffic to motor carriers will not significantly affect fuel consumption or air pollution emissions. Finally, it was concluded that the subject line is suitable for other public purposes should abandonment be granted.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 11, 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.

H. G. HOMME, JR.,  
*Acting Secretary.*

[FR Doc.77-10457 Filed 4-7-77;8:45 am]

[AB 43 (Sub-No. 29)]

### ILLINOIS CENTRAL GULF RAILROAD CO. Abandonment of Line

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Illinois Central Gulf Railroad Company (ICG) of its line of railroad between Milepost 12.7 in Lexington and Milepost 24.2 in Gwin, a distance of 11.5 miles, in Holmes County, Miss., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the traffic volume exhibited on the portion of the branch proposed for abandonment is low. A shift of rail traffic to motor carriers would cause no substantial alterations in existing air quality, fuel consumption, high-

way traffic, and noise intrusions in the area. No land use plans of an economic or industrial importance exist which depend upon the continued operation of the line. Consequently, there is no indication that this action will have a serious adverse impact on rural or community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 11, 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.

H. G. HOMME, Jr.,  
*Acting Secretary.*

[FR Doc.77-10458 Filed 4-7-77;8:45 am]

[AB 43 (Sub-No. 23)]

**ILLINOIS CENTRAL GULF RAILROAD CO.**  
Abandonment of Line

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Illinois Central Gulf Railroad Company (ICG) of its line of railroad between Ethel and Clinton, La., a distance of 8.3 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and that preparation of detailed environmental impact statement will not be required under section 4332 (2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because of the low volume of traffic over the line. Additionally a 290 foot long bridge was destroyed by fire making the line impassable to Clinton, La., the only shipping or receiving point on the line.

There will not be any significant change in air quality, fuel consumption, or water quality due to the loss of the rail line. No land use plans of economic importance exist which would necessitate the continued operation of the line. Additionally the right-of-way has not

been found suitable for transportation or recreation use following abandonment.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 11, 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.

H. G. HOMME, Jr.,  
*Acting Secretary.*

[FR Doc.77-10462 Filed 4-7-77;8:45 am]

[AB 43 (Sub-No. 35)]

**ILLINOIS CENTRAL GULF RAILROAD CO.**  
Abandonment of Line

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Illinois Central Gulf Railroad Company (ICG) of its line of railroad between Milepost 120.91 near Silver Creek and Milepost 148.65 in Mendenhall, a distance of 27.74 miles in Lawrence and Simpson Counties, Miss., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the diversion of rail traffic to motor carriers (approximately 3 trucks per day) would result in only minor alterations in fuel consumption, air quality, and ambient noise levels in the affected area. No land use plans of an economic or industrial importance exist which depend upon the continued operation of the line. Consequently, there is no indication that this action will have a serious adverse impact on rural or community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 11, 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 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.

H. G. HOMME, Jr.,  
*Acting Secretary*

[FR Doc.77-10461 Filed 4-7-77;8:45 am]

[Notice No. 146]

**MOTOR CARRIER BOARD TRANSFER PROCEEDINGS**

The following publications include motor carrier, water carrier, broker, and freight forwarder transferee applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before May 9, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopsis form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-PC-76965, filed March 30, 1977. Transferee: WILLIAM B. MILLER, doing business as BILL MILLER TRUCKING, 1012 9th Avenue, Shenandoah, Iowa 51601. Transferor: K & M Trucking Co., Inc., Box 37, Farragut, Iowa 51639. Applicant's representative: William B. Miller, 1012 9th Avenue, Shenandoah, Iowa 51601. Authority sought for pur-

chase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 68528, issued May 14, 1971, as follows: Flour, feed, agricultural implements, building materials, and seed from Omaha, Nebr. to Farragut, Iowa, and points within 15 miles of Farragut; building materials from Nebraska City, Nebr. to Farragut, Iowa and points within 15 miles thereof; feed and seed from St. Joseph, Mo. to Farragut, Iowa and points in Page and Fremont Counties, Iowa; livestock from points in Fremont, Mills, Page, and Montgomery Counties, Iowa, on the one hand, and, on the other, Omaha, Nebr. and St. Joseph, Mo.; and livestock, seed, feed, and agricultural implements between Farragut, Iowa and points in Page County, Iowa, on the one hand, and on the other, Kansas City, Kansas, Kansas City, Missouri, and Nebraska City, Nebr. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76979, filed January 28, 1977. Transferee: NIDEROST, INC., 2300 Canyon Road, Ellensburg, Washington 98926. Transferor: Pattons Inc., 2300 Canyon Road, Ellensburg, Washington 98926. Applicant's representative: Frederic P. Holbrook, Attorney at Law, 1226 Taylor North, Suite 8, Seattle, Washington 98101. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC 129516, MC 129516 (Sub-No. 2), MC 129516 (Sub-No. 3), MC 129516 (Sub-No. 5), MC 129516 (Sub-No. 8), MC 129516 (Sub-No. 11), MC 129516 (Sub-No. 13), MC 129516 (Sub-No. 17), MC 129516 (Sub-No. 21), MC 129516 (Sub-No. 24), MC 129516 (Sub-No. 25), MC 129516 (Sub-No. 30), MC 129516 (Sub-No. 31), MC 129516 (Sub-No. 34), and MC 129516 (Sub-No. 39), issued January 17, 1969, July 24, 1970, May 6, 1971, May 1, 1975, March 29, 1973, June 13, 1974, November 12, 1973, April 22, 1974, July 19, 1974, July 19, 1974, June 27, 1975, February 11, 1976, March 5, 1976, November 7, 1975, and August 5, 1976, as follows: Copra meal from San Francisco, Calif. to points in Washington; cottonseed meal from points in California to points in Washington and Oregon; fish meal from points in Washington and Portland, Oreg. to points in Washington, Oregon, and Idaho; alfalfa pellets and alfalfa meal from points in Skagit and Grant Counties, Wash. to points in Multnomah County, Oreg.; feed ingredients from points in Multnomah County, Oreg. to points in Washington; fertilizer from Oakland and Lathrop, Calif. to Seattle, Wash.; alfalfa pellets from specified counties in Washington to specified counties in Oregon; bananas and agricultural commodities from Seattle and Tacoma, Wash. and points in California to ports of entry on the United States-Canada boundary line at specified points in Washington, Idaho, Montana, and North Dakota; animal feed and animal feed ingredients between points in Washington and Oregon; hor-

ticultural mulch from Snoqualmie Falls, Wash. to points in Washington, Idaho, and Oregon; frozen pet food ingredients from Edmonds, Wash. to points in California; fruit juices and fruit drinks from points in Orange City, Calif. to specified ports of entry on the United States-Canada boundary line in Idaho, Montana, and North Dakota; fertilizer from Clark County, Wash. to specified counties in Oregon and to ports of entry on the United States-Canada boundary line at specified points in Washington; boron, borax, and borate ingredients from Boron, Calif. to ports of entry on the United States-Canada boundary line at specified points in Washington; canned goods and frozen potatoes from Walla Walla and Pasco, Wash. to ports of entry on the United States-Canada boundary line at specified points in Washington; fertilizer from ports of entry on the United States-Canada boundary line at specified points in Washington, Idaho, and Montana to points in Washington, Oregon, and Idaho; dehydrated potato granules from the port of entry on the United States-Canada boundary line at Sweetgrass, Mont. to San Francisco and Los Angeles, Calif.; Peoria and Chicago, Ill., Fort Worth, Dallas, Lubbock, and Abilene, Tex., and Kansas City, Mo.; and fruit juices and drinks from Visalia, Calif. to port of entry on the United States-Canada boundary line at Oroville, Wash. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77000, filed March 1, 1977. Transferee: FUND FREIGHT LINES, INC., 1013 Fifth Ave., Monroe, Wisconsin, 53566. Transferor: Pirkle Refrigerated Freight Lines, Inc., P.O. Box 3358, Madison, Wisconsin, 53704. Applicants' representative: Charles W. Singer, 2440 East Commercial Blvd., Ft. Lauderdale, Florida, 33308. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 111375 (Sub-No. 64), issued December 29, 1972, as follows: *Caseln, feed, caseln equipment, and empty containers* for caseln, between points in that part of Wisconsin bounded by a line beginning at Wisconsin Dells, and extending along Wisconsin Highway 23 to Reedsburg, thence along Wisconsin Highway 33 to Union Center, thence along Wisconsin Highway 80 to Elroy, thence along Wisconsin Highway 71 to Junction Wisconsin Highway 131, thence along Wisconsin Highway 131 to Tomab and thence along U.S. Highway 12 to point of beginning, including points on the indicated portions of the highways specified (except those on U.S. Highway 12), on the one hand, and on the other Chicago, Ill.; *Such merchandise*, as is dealt in by both food manufacturing establishments, the business of which is the processing, manufacture, and sale of prepared food products, and wholesale food business houses, and in connection therewith, *equipment, materials, and supplies* used in the conduct of such business, when moving to or from ware-

houses, plants or other facilities of such establishments, Between Chicago, Ill., on the one hand, and on the other, points in that part of Wisconsin south and west of U.S. Highway 12 (not including points located on U.S. Highway 12); *farm machinery and farm supplies*, from Chicago, Ill., and points in Illinois in the Chicago, Ill., Commercial Zones, as defined by the Commission, to points in that part of Wisconsin within 200 miles of Madison, Wis., located south and west of U.S. Highway 12, not including points on the indicated portion of U.S. Highway 12; and *fertilizer*, from Bloom Township (Cook County), Ill., to points in Crawford, Grant, Green, Iowa, Lafayette, Richland, Rock, and Vernon Counties, Wis. (and points in Dane and Sauk Counties, Wis.), located on, south and west of U.S. Highway 12. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77011, filed March 4, 1977. Transferee: CELERYVALE TRANSPORT, INC., a Tennessee corporation, 1318 East 23d St., Chattanooga, Tenn. 37402. Transferor: Celeryvale Transport, Inc., a Colorado corporation, 1318 East 23d St., Chattanooga, Tenn. 37402. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, Ill. 60068. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates Nos. MC 134105, MC 134105 (Sub-No. 1), MC 134105 (Sub-No. 11), MC 134105 (Sub-No. 12), issued March 18, 1970, August 14, 1970, April 28, 1975, and June 29, 1976, respectively, as follows: *Bananas and agricultural commodities* when transported with bananas from points in Alabama, Louisiana, Mississippi, and Texas (specified counties excepted) to points in Colorado; also from Mobile, Ala., to points in Alabama, Colorado, Florida, Georgia, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Utah, and Wyoming; *meats, meat products, meat by-products, and articles* distributed by packinghouses from the facilities of Farmland Foods, Inc., at Crete, Nebr., to points in Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77013, filed March 4, 1977. Transferee: C & S SERVICES, INC., 75 Kendridge Rd., Akron, Ohio 44305. Transferor: Akron Express, Inc., 1821 East Market St., Akron, Ohio 44305. Applicant's representative: Paul F. Berry, Attorney at Law, 8 East Broad St., Columbus, Ohio 43215. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 139367 (Sub-No. 2), issued March 21, 1975, as follows: *Commodities* dealt in by rubber and rubber products manufacturers between the facilities of the B. F.



Goodrich Company at Columbus, Medina, and Akron, Ohio, on the one hand, and, on the other, Detroit, Mich.; and between the facilities of the B. F. Goodrich Company at Akron, and Medina, Ohio. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77014 filed March 8, 1977. Transferee: LEYTEM TRUCKING, INC., 2315 Jackson St., Dubuque, Iowa 52001. Transferor: Arnold J. Leytem, doing business as Leytem Trucking Co., 525 East 6th St., Dubuque, Iowa 52001. Applicant's representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, Iowa 52001. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate Nos. MC 108962 and MC 108962 (Sub-No. 2), issued April 19, 1948, and May 18, 1966 respectively, as follows: *Heavy machinery and contractors machinery, equipment, materials, and supplies*, between Dubuque, Iowa, and points and places in Iowa within 25 miles of Dubuque, on the one hand, and, on the other, points and places in Wisconsin and Minnesota; and *combination truss-joists*, from the plantsite of Trus-Joist Midwest Corporation at Dubuque, Iowa, to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77015, filed March 9, 1977. Transferee: PARIS TRANSPORT, INC., 111 North Central Ave., Paris, Illinois 61944. Transferor: Francis Black, doing business as Black Bros., R.R. No. 6, Paris, Illinois 61944. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate Nos. MC 101280 and MC 101280 (Sub-No. 10) issued October 14, 1959, and December 4, 1970, respectively, as follows: *Agricultural commodities and animal and poultry feeds*, from points in Edgar and Vermillion Counties, Ill., to points in Indiana, Kentucky, Missouri, and Tennessee; *agricultural limestone*, from Greencastel and Statesville, Ind., to points in Clark and Edgar Counties, Ill.; *animal and poultry feed*, from St. Louis, Mo., to points in Edgar County, Ill., and those in Vigo County, Ind.; from points in the Chicago, Ill., Commercial Zone, as defined by the Commission, to points in Vigo County, Ind.; *brick and clay products*, from Statesville and Terre Haute, Ind., to points in Clark and Edgar Counties, Ill.; *coal*, from mines in Clay, Parke, and Vermillion Counties, Ind., to points in Edgar County, Ill.; from Brazil, Ind., and points (other than mines) in Clay County, Ind., within five miles of Brazil and Clinton, Ind., and points (other than mines) in Parke and Vermillion Counties, Ind., within ten miles of Clinton, Ind., to Paris, Ill., and points within ten miles of Paris; from

points in Vigo County, Ind., within ten miles of Clinton, Ind., and within five miles of Brazil, Ind., respectively, to Paris, Ill., and points in Clark County, Ill., within ten miles of Paris; from points in Clay, Gibson, Vermillion, and Vigo Counties, Ind., to points in Clark and Edgar Counties, Ill.; from points in Clay, Gibson, Sullivan, Vermillion, and Vigo Counties, Ind., to points in Edgar County, Ill.; from points in Clay, Vermillion, and Vigo Counties, Ind., to points in Clark and Edgar Counties, Ill.

*Corn and corn products*, from Paris, Ill., to points in Indiana; and *rejected shipments of corn and corn products*, from points in Indiana to Paris, Ill.; *farm machinery and farm implements*, from Indianapolis, Ind., to points in Edgar County, Ill.; *feed and fertilizer*, from Indianapolis, Ind., to points in Edgar County, Ill.; *feed, fertilizer, and fertilizer materials*, from Indianapolis and Terre Haute, Ind., to points in Edgar County, Ill.; *fruits and vegetables*, from points in Kentucky and Tennessee to points in Illinois; *hay and grain*, from points in Clark and Edgar Counties, Ill., to points in Clay, Daviess, Gibson, Greene, Hendricks, Knox, Lawrence, Sullivan, Vanderburgh, Vermillion, Vigo, and Warrick Counties, Ind.; *livestock*, from points in Clark and Edgar Counties, Ill., to Indianapolis and Terre Haute, Ind.; *livestock and agricultural commodities*, from points in Clark, Coles, Edgar, and Vermillion Counties, Ill., to Indianapolis, Terre Haute, and Vincennes, Ind.; *lumber*, from saw mills in Marion and Putnam Counties, Ind., to points in Edgar County, Ill.; from the plantsite of the T. A. Foley Lumber Company, in or near Paris, Ill., to points in Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, West Virginia, and Wisconsin; *phosphate*, from points in Giles and Maury Counties, Tenn., to points in Vigo County, Ind., and those in Clark, Edgar, and Vermillion Counties, Ill.; *sand and gravel*, from points in Parke and Vermillion Counties, Ind., to points in Edgar County, Ill.; *shale, gravel, and other road materials*, from points in Vermillion and Vigo Counties, Ind., to points in Edgar County, Ill.; *stone, sand, and gravel*, from Clinton, Ind., to points in Edgar County, Ill.; *wooden fence posts*, from points in Kentucky and Tennessee to points in Edgar County, Ill.; MC 101280 (Sub-No. 10) *corn and corn products* (except liquid commodities, in bulk) from Paris, Ill., to points in Michigan, Ohio (except Dayton and Columbus), and Wisconsin. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77016, filed March 9, 1977. Transferee: FETZ, INC., P.O. Box 47685, Doraville, Ga. 30362. Transferor: O'Boyle Tank Lines, Inc., P.O. Box 30006, Washington, D.C. 20014. Attorney for Transferee: Guy H. Postell, Esq., 3384 Peachtree Road NE., No. 713, Atlanta, Ga. 30326. Attorney for transferor: William

P. Sullivan, Esq., 1819 H Street NW., No. 1030, Washington, D.C. 20006. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 123067 (Sub-No. 95), acquired by transferor pursuant to MC-F-11656, consummated January 29, 1976, as follows: *Fertilizer*. From the plantsite of the Farmers' Chemical Association, Inc., at or near Harrison, Hamilton County, Tenn., to points in Georgia, Kentucky, North Carolina, and South Carolina. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77021, filed March 11, 1977. Transferee: OCEAN TERMINALS, INC., 410 Park Place Bldg., Seattle, Wash. 98101. Transferor: King Cartage Co., 4700 Denver South, Seattle, Wash. 98134. Applicants' representative: Joseph G. Dall, Jr., Attorney-at-Law, P.O. Box 567, McLean, Va. 22101. Authority sought for purchase by transferee of the operating rights of transferor, set forth in Certificate No. MC 102504, issued December 4, 1956, as follows: General commodities, except those of unusual value, Class A and B explosives, commodities in bulk, and commodities requiring special equipment, between Seattle, Wash., on the one hand, and, on the other, points within three miles of Seattle; and general commodities with the above exceptions, in collection and delivery service, between points in Seattle, Wash. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77022, filed March 11, 1977. Transferee: INTERNATIONAL TRAILER TRANSPORT, INC., 796 Frelinghuysen Ave., P.O. Box 4067, Newark, N.J. 07112. Transferor: L J P Truck Lines, Inc., 273 Meserole St., Brooklyn, N.Y. 11222. Applicants' representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, N.J. 08904. Authority sought for purchase by transferee of that portion of the operating rights of transferor set forth in Certificate No. MC 59114, issued November 20, 1975, as follows: General commodities, except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Elizabeth, N.J., on the one hand, and, on the other, points in Camden, Passaic, Bergen, Hudson, Essex, Union, Middlesex, Monmouth, Mercer, Somerset, Morris, Ocean, and Sussex Counties, N.J., with service at Elizabeth, N.J. restricted to the transportation of traffic having an immediately prior or subsequent movement from or to a point beyond Elizabeth. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

ROBERT L. OSWALD,  
Secretary.

[FR. Doc. 77-10468 Filed 4-7-77; 8:45 am]

[Docket Nos. AB 37 (Sub-No. 5), AB 7 (Sub-No. 30)]

**OREGON-WASHINGTON RAILROAD AND NAVIGATION CO., ET AL.**

**Abandonment of Operations and Line**

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment of operations and the line by the Oregon-Washington Railroad and Navigation Company, the Union Pacific Railroad Company, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company between South Montesano and Montesano, a distance of 1.6 miles, in Grays Harbor 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 abandonment of this line, and the removal of the railroad bridge across the Chehalis River will have only a minimal effect on rail operations. Inasmuch as the Burlington Northern will continue to provide rail service to Montesano, the station where all of the traffic on the line to be abandoned is generated, there will be no diversion of traffic to motor carriers. Inasmuch as the vast majority of traffic shipped from Montesano moves north, removal of the Chehalis River bridge will for the most part not result in circuitous rail movements. No economic development plans which would conflict with the proposed abandonment have been identified. Furthermore, the line is not considered suitable for alternate public purposes after abandonment.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 11, 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.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc.77-10456 Filed 4-7-77;8:45 am]

[AB 12 (Sub-No. 37)]

**SOUTHERN PACIFIC TRANSPORTATION CO.**

**Abandonment of Line**

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company of a line of railroad between Quinif and Rosebud, in Falls and Milam Counties, Tex., a distance of 14.0 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that diversion of rail traffic at the levels of recent years will not result in a significant increase in energy consumption, highway traffic, or air pollution. There are no indications of definite developmental activities which are reliant upon continued service over the line. Therefore, the abandonment is not expected to have a serious adverse impact on rural or community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before May 11, 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.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc.77-10459 Filed 4-7-77;8:45 am]

[AB 9 (Sub.No. 7)]

**ST. LOUIS-SAN FRANCISCO RAILWAY CO.**

**Abandonment of Line**

MARCH 25, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the St. Louis-San Francisco Railway Company of its line of railroad between Alice-

ville and Reform, in Pickens County Ala., a distance of 20.35 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(c) of the NEPA.

It was concluded, among other things, that since all shippers on the line will continue to be served following abandonment, there will be no diversion of rail traffic to motor carrier. Therefore, no increase should occur in energy consumption, highway congestion, or air pollution levels as a result of the abandonment. There are no indications of definite developmental plans which are reliant upon continued service on the line. Therefore, the abandonment is not expected to have a serious adverse impact upon community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before May 11, 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.

H. G. HOMME, Jr.,  
Acting Secretary.

[FR Doc.77-10460 Filed 4-7-77;8:45 am]

**Office of Proceedings**

**MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS**

APRIL 8, 1977.

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR §1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules

should comply with Section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute and application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for*

*good cause shown, and restrictive amendments will not be entertained following publication in the Federal Register of a notice that the proceeding has been assigned for oral hearing.*

Each applicant states that there will be no significant effect of the quality of the human environment resulting from approval of its application.

No. MC 140829 (Sub-No. 45), filed March 29, 1977. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Highway 20, Sioux City, Iowa 51102. Applicant's representative: William J. Harlon, 55 Madison Avenue, Morristown, N.J. 07960. 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 Section A 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 Denver, Greeley and Sterling, Colo., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, restricted to the transportation of traffic originating at the named origins and destined to named destination points.

NOTE.—Prehearing conference set for April 20, 1977 at Denver, Colorado.

No. MC 142964 (Sub-No. 2), filed March 31, 1977. Applicant: RONAR TRUCKING CO., 32 Commanche Road,

Gunnison, Colo. 81230. Applicant's representative: William J. Lippman, Suite 140, Cherry Creek Center, 360 South Monroe, Denver, Colo. 80209. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, from Denver and Sterling, Colo. to points in Maryland, Delaware, New Jersey, New York, Connecticut, Massachusetts, Pennsylvania and Vermont; and (2) *materials, equipment and supplies and such other commodities as are used or dealt in by persons engaged in the production and distribution of the commodities named in (1) above*, from points in Maryland, Delaware, New Jersey, New York, Connecticut, Massachusetts, Pennsylvania and Vermont to Denver and Sterling, Colo. restricted to traffic originating at or destined to the plantsites and facilities utilized by Litvak Meat Co. located at Denver, Colo., and Sterling Colorado Beef Co. located at Sterling, Colo., and further restricted to traffic under a continuing contract or contracts with Litvak Meat Co. and Sterling Colorado Beef Co.

NOTE.—Prehearing conference set for April 20, 1977 at Denver, Colorado.

By the Commission.

ROBERT L. OSWALD,  
Secretary.

[FR Doc.77-10578 Filed 4-7-77; 8:45 am]

# sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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### 1

**AGENCY HOLDING THE MEETING:**  
Indian Claims Commission.

**TIME AND DATE:** 10:15 A.M., April 13, 1977.

**PLACE:** Room 600, 1730 K Street, NW., Washington, D.C.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**  
Docket 22-C, Lipan Apache; Docket 73-A, Seminole; Docket 100-B-1, Klamath and Modoc; Docket 182-A, Fort Sill Apache; Docket 355, Pueblo of Santo Domingo.

**FOR MORE INFORMATION:**

David H. Bigelow, Executive Director, Room 640, 1730 K Street, NW., Washington, D.C. 20006, Tel. 202-653-6174.

[S-113-77 Filed 4-5-77; 3:43 pm]

### 2

**AGENCY HOLDING THE MEETING:**  
Federal Power Commission.

APRIL 5, 1977.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

**TIME AND DATE:** April 12, 1977, 2:00 p.m.

**PLACE:** 825 North Capitol Street, Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**  
(Agenda.) Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:**

Kenneth F. Plumb, Secretary, Telephone, 202-275-4166.

This is a list of the matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information Room 1000.

**POWER AGENDA 7584TH MEETING—APRIL 12, 1977 REGULAR MEETING—PART I (2 P.M.)**

P-1 Docket No. ER76-285 (Phase II), Public Service Company of New Hampshire.

P-2 Docket No. ER76-249, Lake Superior District Power Company.

P-3 Docket Nos. E-8514, E-9133 and ER76-302, Southern Services, Inc.

P-4 Project No. 2580, Consumers Power Company.

**MISCELLANEOUS AGENDA 7548TH MEETING—APRIL 22, 1977 REGULAR MEETING—PART I**

M-1 Docket No. RM75-29, Fuel Adjustment Provisions in PPC Rate Schedules.

**POWER AGENDA 7584TH MEETING—APRIL 12, 1977 REGULAR MEETING—PART II**

CP-1 Docket No. ER77-195, El Paso Electric Company.

CP-2 Docket Nos. ER77-130 and ER77-161, New England Power Service Company.

CP-3 Docket No. ES77-20, Iowa Public Service Company.

CP-4 Project No. 2246, California, Yuba County Water Agency.

CP-5 Project No. 2613, Central Maine Power Company, et al.

CP-6 Project No. 2233, Portland General Electric Company.

**MISCELLANEOUS AGENDA 7584TH MEETING—APRIL 12, 1977 REGULAR MEETING—PART II**

CM-1 Pacific Gas and Electric Company.

CM-2 Boston Edison Company.

**KENNETH F. PLUMB,**  
*Secretary.*

[S-112-77 Filed 4-5-77; 3:03 pm]

### 3

**AGENCY HOLDING THE MEETING:**  
Federal Home Loan Bank Board.

[No. 8]

APRIL 4, 1977.

Pursuant to the Government in the Sunshine Act of 1976, 5 U.S.C. 552b(e) (1) and (3), announcement is made of a Board meeting to be held on April 13, 1977, at 320 First St., NW., Room 630, Washington, D.C., at 9:30 a.m. at which the following agency business will be conducted:

Consideration of Advisory Council Travel Authorization.

Branch Office Application, Bell Federal Savings and Loan Association, Chicago, Illinois.

Branch Office Application, First Federal Savings and Loan Association of Vancouver, Vancouver, Washington.

Branch Office Application, Benj. Franklin Federal Savings and Loan Association of Portland, Portland, Oregon.

Limited Facility Application, Peoples Federal Savings and Loan Association, Inglewood, California.

Proposed Modifications of Applications for Insurance of Accounts and Permission to Organize (Application Forms).

Branch Office Application, First Federal Savings and Loan Association of Detroit, Detroit, Michigan.

Consideration of Proposed New § 563.17-3 of the Insurance Regulations Pertaining to Definition of "Market Value."

Mr. Robert Marshall (202-376-3012) is the Board official designated to respond

to requests for information pertaining to such meeting.

The Federal Home Loan Bank Board.

**RONALD A. SNIDER,**  
*Assistant Secretary.*

[S-111-77 Filed 4-5-77; 2:47 pm]

### 4

**AGENCY HOLDING THE MEETING:**  
International Trade Commission.

**ADDITIONAL PERSON EXPECTED TO BE PRESENT AT CLOSED PORTION OF MEETING OF MARCH 31, 1977**

At its meeting of March 31, 1977, the Commission acting on the authority of 19 U.S. 1335 and in conformity with 19 CFR 201.35(b) and (e) (1), amended the portion of its public notice for the meeting of March 31, 1977, which pertains to the selection of personnel under reorganization (agenda item No. 7) in closed session. Commissioners Parker, Moore, Bedell, and Ablondi determined by recorded vote that the following person and his corresponding affiliation is also expected to be present during the closed portion of the meeting: F. David Foster Assistant to Commissioner Leonard (Commissioners Minchew and Leonard were not present for the vote.)

By order of the Commission.

Issued: March 31, 1977.

**KENNETH R. MASON,**  
*Secretary.*

[S-106-77 Filed 4-5-77; 1:28 pm]

**AGENCY HOLDING THE MEETING:**  
Federal Maritime Commission.

**TIME AND DATE:** April 13, 1977-10:00 a.m.

**PLACE:** Room 12126, 1100 L Street, N.W., Washington, D.C. 20573.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Portions open to the public:

1. Agreement No. 57-105: Change of Membership Status for Barber Blue Sea Line.

2. Agreement No. 9982-10, modification of the Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference.

3. Agreement No. 10142-2, modification of an agency agreement between Lykes Bros. Steamship Co., Inc. and States Steamship Company.

4. Agreement No. 10259, Rationalization Agreement; between U.S. Atlantic and Gulf Trade to Port Harcourt, Nigeria.

5. Special Docket No. 485, *Ford Motor Company v. Sea-Land Service, Inc.*

6. Special Docket No. 496, *American Gilsonite Co., Inc. v. Lykes Bros. Steamship Co., Inc.*

Portions closed to the public:

1. Hawaiian Marine Lines, Inc., rates applicable on lumber originating in Oregon.

2. Alaska Cargo Lines, Inc., Initial tariff in the Seattle, Washington/Western Alaska trade.

**CONTACT PERSON FOR MORE INFORMATION:**

Joseph C. Polking, Acting Secretary,  
202-523-5727.

[S-100-77 Filed 4-5-77; 1:28 pm]

**6**

**AGENCY HOLDING THE MEETING:**  
International Trade Commission.

**COMMISSION MEETING FOR APRIL 18, 1977**

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on Monday, April 18, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436. Except as hereinafter specified, the Commission plans to consider the following agenda items in open session:

(1) Agenda; (2) Minutes; (3) Exercising devices (Inv. 337-TA-24), if necessary; (4) Status report on television receivers (Inv. 337-TA-23); (5) Possible continuation of the synthetic organic chemical reports; (6) Petitions and complaints—(a) Pipe fittings (Docket No. 441); (b) Face plates (Docket No. 439; and (c) Swimming pools (Docket No. 440); (7) Availability of staff memoranda—see memorandum from the Secretary of March 14, 1977; (8) Items left over from previous agenda; (9) Reorganization.

If you have any questions concerning the agenda for the April 18, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for by access to the public files of the Commission, or when such documents are not in such files, as provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with 19 CFR 201.38(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 CFR 201.36(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the April 18, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 9) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) The discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman.  
Joseph O. Parker, Vice Chairman.  
Will E. Leonard, Commissioner.  
George M. Moore, Commissioner.  
Catherine Bedell, Commissioner.  
Italo H. Ablondi, Commissioner.  
Kenneth R. Mason, Secretary.  
Jayne L. Silva, Staff Assistant (if Mr. Mason is not available).  
E. Bernice Morris, Staff Assistant.  
Charles R. Ramsdale, Chief, Personnel Division.  
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available).  
Bruce N. Hatton, Assistant to Commissioner Leonard.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of April 18, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b (c) (1) and in conformity with 19 CFR 201.36(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and 19 CFR 201.36(b) (2) and (6).

Issued: April 4, 1977.

By order of the Commission.

KENNETH R. MASON,  
Secretary.  
RUSSELL N. SHEWMAKER,  
General Counsel.

[S-110-77 Filed 4-5-77; 1:28 pm]

**7**

**AGENCY HOLDING THE MEETING:**  
Federal Reserve System.

**CHANGE OF TIME (CANCELLATION) OF A BOARD MEETING ITEM**

Discussion of the following item, which was scheduled for the open meeting of the Board of Governors on April 11, 1977, has been cancelled:

Record of discount rate policy actions during 1976 for inclusion in the Annual Report for 1976.

As so modified, the previously announced open items for this meeting are:

1. Request by protestants for an oral presentation on the application of Central Banccompany, Jefferson City, Missouri, to acquire shares of The First National Bank of Mexico, Mexico, Missouri.
2. Proposed purchase of three computers now under lease at the Little Rock, Louisville, and Memphis Federal Reserve Branches.
3. Legislative recommendations for inclusion in the Board's Annual Report for 1976.
4. Proposal to reduce the frequency with which Edge Act corporations engaged in

banking must file a certain report with the Board.

5. A possible amendment to Regulation Z (Truth in Lending) to require disclosure of any variable rate interest clause that is part of the contract. (Proposed earlier for public comment; docket no. R-0003). This matter was originally considered at a meeting on March 28, 1977.

6. A possible interpretation of Regulation Z (Truth in Lending), to be issued for comment, exempting credit card systems that bill their customers on a transaction-by-transaction basis rather than on a cumulative account basis from certain of the regulation's provisions.

7. A possible amendment to Regulation Z (Truth in Lending) to permit Spanish language Truth in Lending disclosures in the Commonwealth of Puerto Rico with English language disclosures provided upon the customer's request. (Proposed earlier for public comment; docket no. R-0066).

8. A possible interpretation of Regulation H (Membership of State Banking Institutions in the Federal Reserve System), to be issued for comment, that would extend the existing restrictions on lending secured by property located in a flood hazard area to the purchase of loans so secured.

9. Possible technical amendments to the flood insurance provisions of Regulation H (Membership of State Banking Institutions in the Federal Reserve System) that would exempt certain loans from the insurance purchase requirements of the regulation. These amendments would implement exemptive provisions included in the Housing Authorization Act of 1976.

The meeting will be held at 10 a.m. in the Board's offices at 20th and Constitution Avenue, NW., Washington, D.C. Information may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at 202-452-3204.

Board of Governors of the Federal Reserve System, April 5, 1977.

GRIFFITH L. GARWOOD,  
Acting Secretary of the Board.  
[S-115-77 Filed 4-6-77; 11:01 am]

**8**

**AGENCY HOLDING THE MEETING:**  
Federal Reserve System.

On Wednesday, April 13, 1977, at 10 a.m. a meeting of the Board of Governors of the Federal Reserve System will be held at the Board's offices at 20th Street and Constitution Avenue, NW., Washington, D.C., to consider the following items of official Board business:

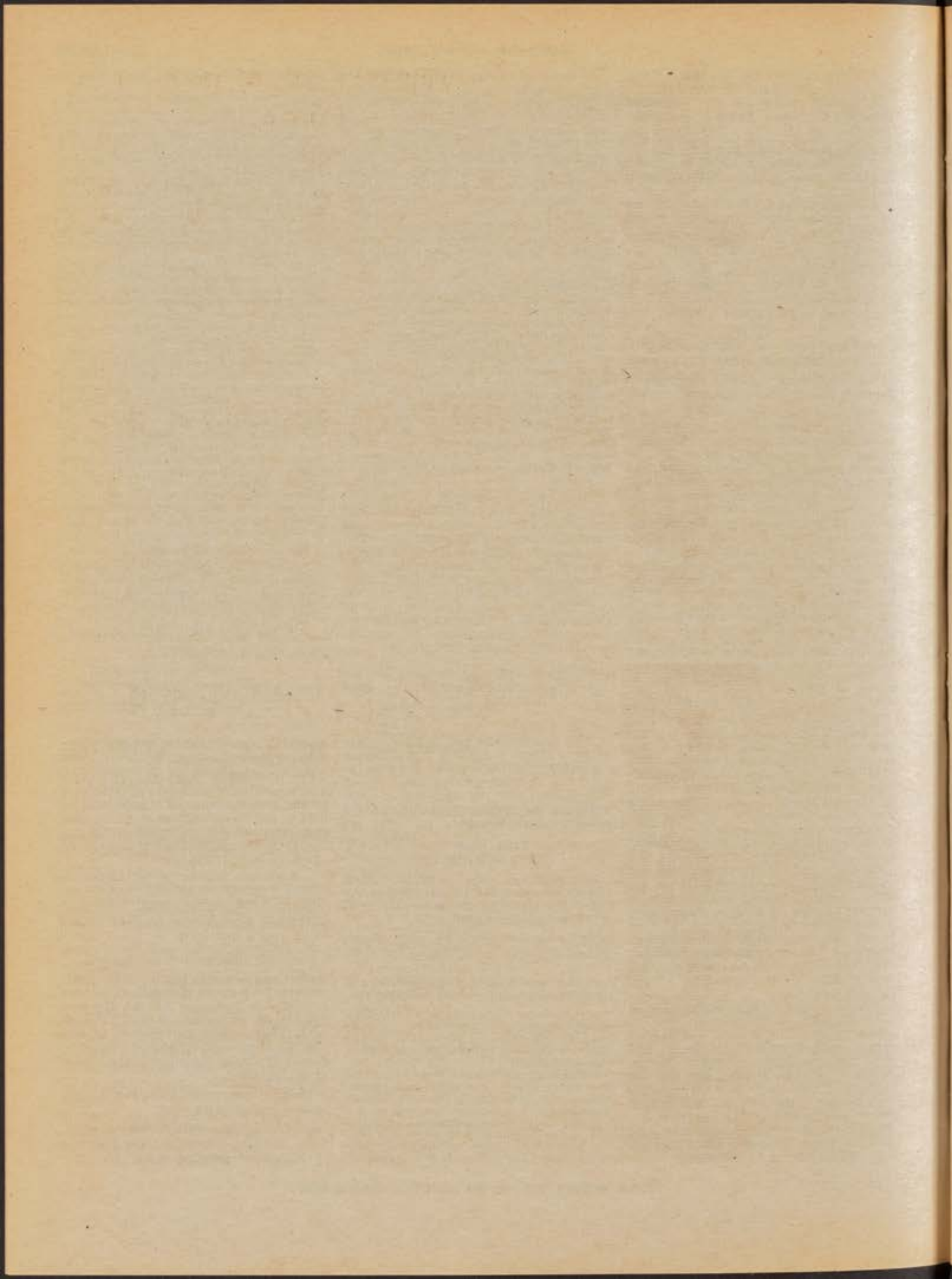
1. A possible amendment to the Board's rules of Employee Responsibilities and Conduct with respect to filing statements of employment and financial interests. This matter was originally scheduled for a meeting on April 8, 1977.

2. Any agenda items carried forward from a previously announced closed meeting.

This meeting will be closed to public observation because the items fall under exemptions contained in the Government in the Sunshine Act (5 U.S.C. 552b (c)). Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at 202-452-3204.

Board of Governors of the Federal Reserve System, April 5, 1977.

GRIFFITH L. GARWOOD,  
Acting Secretary of the Board.  
[S-116-77 Filed 4-6-77; 11:01 am]



FRIDAY, APRIL 8, 1977

PART II



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**DEPARTMENT OF  
LABOR**

Pension and Welfare Benefit  
Programs

**DEPARTMENT OF  
THE TREASURY**

Internal Revenue Service



**EMPLOYEE BENEFIT  
PLANS**

Class Exemption for Certain Transactions  
Between Investment Companies and  
Employment Benefit Plans

## DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Prohibited Transaction Exemption 77-4]

## EMPLOYEE BENEFIT PLANS

## Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans

On November 16, 1976, notice was published in the FEDERAL REGISTER (41 FR 50516) that the Department of Labor (the Department) and the Internal Revenue Service (the Service) had under consideration a proposed class exemption from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code. The class exemption was requested in an application (Application No. D-055) filed by T. Rowe Price Associates, Inc., Scudder, Stevens & Clark, Stein Roe & Farnham and Thorn-dike, Doran, Paine & Lewis, Inc., investment advisory firms. The class exemption would exempt from the prohibited transaction restrictions the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan (e.g., an investment manager) is also the investment adviser for the investment company. The exemption was proposed in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 23, 1975 and Rev. Proc. 75-26, 1975-1 C.B. 722, and all interested persons were invited to submit comments on the proposed exemption.

Eight comments were received with regard to the proposed exemption, all supporting the grant of the exemption. Three comments supported the exemption as proposed, while one comment suggested that the exemption be expanded to cover so-called mutual fund "in house" plans. This comment was withdrawn after the publication of notice of the pendency of a proposed class exemption for mutual fund "in house" plans in 41 FR 54080.

Each of the remaining comments, while supporting the exemption, contained one or more suggestions for changes in the exemption.

One comment suggested a technical amendment to sections I(c) and II(c) of the exemption to make clear that payment of an investment advisory fee based on total plan assets, from which credit has been subtracted representing the plan's pro rata share of the investment advisory fees paid by the investment company, would not contravene the ban on payment of investment management or investment advisory fees with respect to plan assets invested in shares of the investment company. The comment was accepted, and incorporated in sections I(c) and II(c). In addition, a typographical error in section I(c) has been cor-

rected. Another commentator suggested that the investment adviser be allowed to charge his investment advisory fee or the fee paid for management of the investment company, whichever was higher, so long as no double fee was charged, on the grounds that the higher fee is often necessary for the economic servicing of smaller accounts. This suggestion was not accepted, because it would provide a situation with a potential for abuse involving economic gain for the fiduciary which could not be easily monitored.

Three suggestions were rejected as unnecessary in light of existing provisions in the proposed exemption. The first was to amend section II(e) of the proposed exemption to permit the Board of Trustees to approve the fees paid to the fiduciary/investment adviser. Section II(e) provides for approval by a second fiduciary of fees paid to the fiduciary/investment adviser. Inasmuch as the Board of Trustees is a fiduciary to the plan, if it meets the criteria set forth in section II(d) of the exemption for a second fiduciary independent of and unrelated to the investment adviser, it may approve the fees paid. The second suggestion, that the investment adviser be allowed to invest in its money market fund without receipt of written approval by the second fiduciary, provided it has notified the trustees both by prospectus and orally of its intent to do so, was not accepted, as the methods provided for approval in section II(e) provide enough alternatives to allow flexibility in receipt of approval, and the method suggested by the commentator would not provide adequate documentation of prior approval. Another suggestion, to the effect that the exemption be clarified to state that it covers insurance company separate accounts which invest portions of their assets in mutual funds, the adviser to which is the insurance company, was not accepted because the exemption, as proposed, covers that situation. Plan assets invested in an insurance company separate account remain plan assets under section 401(b)(2)(B) of the Act. The fact that the insurance company need not hold such assets in trust under section 403(b)(2) of the Act, and that therefore the insurance company holds such assets in its own name and not in the name of the plan, does not alter the fact that it, as investment adviser to the plan, is investing plan assets in a mutual fund to which it is an investment adviser. Therefore, to the extent it meets the conditions set forth in the exemption, it may cause the purchase or sale by such separate account of shares of such mutual funds.

Similarly, a suggestion that the exemption be extended to no-load, closed-end investment companies was rejected because insufficient information was provided to determine whether such an extension would be justified.

Finally, one commentator expressed concern that the standard set forth in section II(d) as to what constitutes an unrelated, independent fiduciary for purposes of the exemption would be used

as the definition of what constitutes an "affiliate" of a bank for purposes of section 408(b)(8) of the Act and section 4975(d)(8) of the Code. Concern was also expressed as to how the standard would operate in situations involving common directors and officers. The first concern is unwarranted, as section II(d) clearly states that the definition set forth is "for purposes of this exemption." With respect to the other concern, section II(d)(3) has been amended to make clear that an officer, director, partner or employee or relative of a fiduciary/investment adviser, or an affiliate thereof, could be a director of the second fiduciary without thereby automatically disqualifying the second fiduciary as being independent of and unrelated to the fiduciary/investment adviser. However, in that case the director must abstain from any participation in the selection of the investment adviser or the approval of any purchases or sales between the plan and the investment company, or the approval of any change of fees charged to or paid by the plan.

**General information.** The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(4) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of November 16, 1976, the Department and the Service make the following determinations:

(1) The class exemption set forth herein is administratively feasible;



(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of plans.

**Exemption.** Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722:

**Section I—Retroactive.** Effective January 1, 1975 until 90 days after the date of granting of this exemption, the restrictions of section 406 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975 (c)(1) of the Code, shall not apply to the purchase or sale by an employee benefit plan of shares of an open-end investment company registered under the Investment Company Act of 1940, the investment adviser for which is also a fiduciary with respect to the plan (or an affiliate of such fiduciary) and is not an employer of employees covered by the plan, provided that the following conditions are met:

(a) The plan does not pay a sales commission in connection with such purchase or sale.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares, unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the purchase of such shares and at the time of such sale.

(c) The plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. This condition does not preclude (1) the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940, (2) the payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company, or (3) the purchase by the plan of shares of the investment company during any fee period for which the plan prepaid its investment management, investment advisory or similar fee, regardless of whether any part of such prepaid fee is returned to the plan, provided that no investment management, investment advisory or similar fee was or is paid by the plan for any subsequent fee period during any part of which such investment in shares of the investment company was or is retained by the plan.

**Section II—Prospective.** Effective 90 days after the date of granting of this exemption, the restrictions of section 406 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by rea-

son of section 4975(c)(1) of the Code, shall not apply to the purchase or sale by an employee benefit plan of shares of an open-end investment company registered under the Investment Company Act of 1940, the investment adviser for which is also a fiduciary with respect to the plan (or an affiliate of such fiduciary) and is not an employer of employees covered by the plan (hereinafter referred to as "fiduciary/investment adviser"), provided that the following conditions are met:

(a) The plan does not pay a sales commission in connection with such purchase or sale.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the purchase of such shares and at the time of such sale.

(c) The plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. This condition also does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company. If, during any fee period for which the plan has prepaid its investment management, investment advisory or similar fee, the plan purchases shares of the investment company, the requirement of this paragraph (c) shall be deemed met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the plan assets invested in the investment company shares (1) is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (2) is returned to the plan no later than during the immediately following fee period, or (3) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this paragraph, a fee shall be deemed to be prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period.

(d) A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent

of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. For purposes of this exemption, such second fiduciary will not be deemed to be independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof if:

(1) Such second fiduciary directly or indirectly controls, is controlled by, or is under common control with the fiduciary/investment adviser or any affiliate thereof;

(2) Such second fiduciary, or any officer, director, partner, employee or relative of such second fiduciary is an officer, director, partner, employee or relative of such fiduciary/investment adviser or any affiliate thereof; or

(3) Such second fiduciary directly or indirectly receives any compensation or other consideration for his or his own personal account in connections with any transaction described in this exemption.

If an officer, director, partner, employee or relative of such fiduciary/investment adviser or any affiliate thereof is a director of such second fiduciary, and if he or she abstains from participation in (i) the choice of the plan's investment adviser, (ii) the approval of any such purchase or sale between the plan and the investment company and (iii) the approval of any change of fees charged to or paid by the plan, then paragraph (d) (2) of this section shall not apply.

For purposes of this exemption, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(e) On the basis of the prospectus and disclosure referred to in paragraph (d), the second fiduciary referred to in paragraph (d) approves such purchases and sales consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by the plan and need not relate to any other aspects of such investments. In addition, such approval must be either (1) set forth in the plan documents or in the investment management agreement between the plan and the fiduciary/investment adviser, (2) indicated in writing prior to each purchase or sale, or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the shares of such investment company.

(f) The second fiduciary referred to in paragraph (d), or any successor thereto,

is notified of any change in any of the rates of fees referred to in paragraph (d) and approves in writing the continuation of such purchases or sales and the continued holding of any investment company shares acquired by the plan prior to such change and still held by the plan. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by the plan and need not relate to any other aspects of such investment.

Signed at Washington, D.C., this 31st day of March 1977.

J. VERNON BALLARD,  
*Acting Administrator of Pension  
and Welfare Benefit Programs,  
Department of Labor.*

WILLIAM E. WILLIAMS,  
*Acting Commissioner of  
Internal Revenue.*

[FR Doc. 77-10156 Filed 4-1-77; 11:44 am]

[Prohibited Transaction Exemption 77-3]

#### EMPLOYEE BENEFIT PLANS

##### Class Exemption Involving Mutual Fund In-House Plans Requested by the Investment Company Institute

On December 10, 1976, notice was published in the FEDERAL REGISTER (41 FR 54080) that the Department of Labor (the Department) and the Internal Revenue Service (the Service) had under consideration a proposed class exemption from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code (the Code), by reason of section 4975(c)(1) of the Code. The class exemption was requested in an application (Application No. D-025), filed by the Investment Company Institute (ICI), a national association of the mutual fund industry. The class exemption would exempt from the prohibited transaction restrictions the acquisition and sale of shares of a registered open-end investment company ("mutual fund") by an employee benefit plan which covers employees of the mutual fund or the mutual fund's investment adviser or principal underwriter, or an affiliate thereof (hereinafter referred to as an "in-house" plan).

The exemption was proposed and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, and all interested persons were invited to submit comments on the proposed exemption.

Six comments were received, all expressing support for the grant of the exemption. Two of the comments urged approval of the exemption as proposed.

A third comment urged that the exemption be extended to in-house plans of closed-end mutual funds. After due consideration, this request was rejected because insufficient information was provided to enable the Department and the Service to determine whether the

conditions set forth in the comment would provide adequate safeguards for plans, their participants and beneficiaries, and extending the comment period to secure such information would unjustifiably impose further delay in the granting of the exemption to the applicant. To the extent the commentator perceives the need for an exemption, the Department and the Service invite the commentator to submit an application for a class exemption pursuant to the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26.

A fourth comment urged that the exemption be granted but that condition (c) of the exemption (which states that for transactions occurring more than 60 days after the grant of the exemption, the plan may not pay a sales commission) be deleted entirely, or be suspended until 60 days after the Securities and Exchange Commission clarifies the application of Rule 22d-1 under the Investment Company Act 1940 to a mutual fund which waives sales commission on sales to in-house plans as required by such condition (c). The commentator further stated that the applicant had received an interpretation from the staff of the Securities and Exchange Commission relating to the uniform offer requirements of Rule 22d-1(f) which would be a satisfactory resolution, for the industry generally, of the problem of sales to in-house plans. Nevertheless, the commentator has requested that condition (c) be either deleted or suspended for an indefinite period of time for the entire class to accommodate its individual situation. Absent a showing of a genuine class problem, the Department and the Service generally will not delete or suspend an otherwise valid class condition to accommodate an individual situation. The Department and Service note that the commentator has stated that it will file with the Securities and Exchange Commission an application for exemption from Rule 22d-1 in the first week in February and that it has on file with the Department and the Service an application for an individual exemption. If the applicant fails to get the relief it seeks from the Securities and Exchange Commission, it may then pursue its request for exemption from the Department and the Service.

Finally, two comments were received from the applicant, noting the requests of the preceding two commentators that the exemption be extended to closed end investment companies and that condition (c) be deleted or suspended, and urging that consideration of those comments not delay the issuance of the exemption.

**General information.** The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act

and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(3) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of December 10, 1976, the Department and the Service make the following determinations:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of Plans.

**Exemption.** Accordingly, the exemption proposed in the notice of December 10, 1976, 41 FR 54080 as set forth below is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

Signed at Washington, D.C. this 31st day of March, 1977.

J. VERNON BALLARD,  
*Acting Administrator of Pension  
and Welfare Benefit  
Programs, Department of Labor.*

WILLIAM E. WILLIAMS,  
*Acting Commissioner of  
Internal Revenue.*

Effective for transactions occurring after December 31, 1974, the restrictions of sections 406 and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the acquisition or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 by an employee benefit plan covering only employees of such investment company, employees of the in-

vestment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of such investment adviser or principal underwriter, provided that the following conditions are met (whether or not such investment company, investment adviser, principal underwriter or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory or similar fee to such investment adviser, principal underwriter or affiliated per-

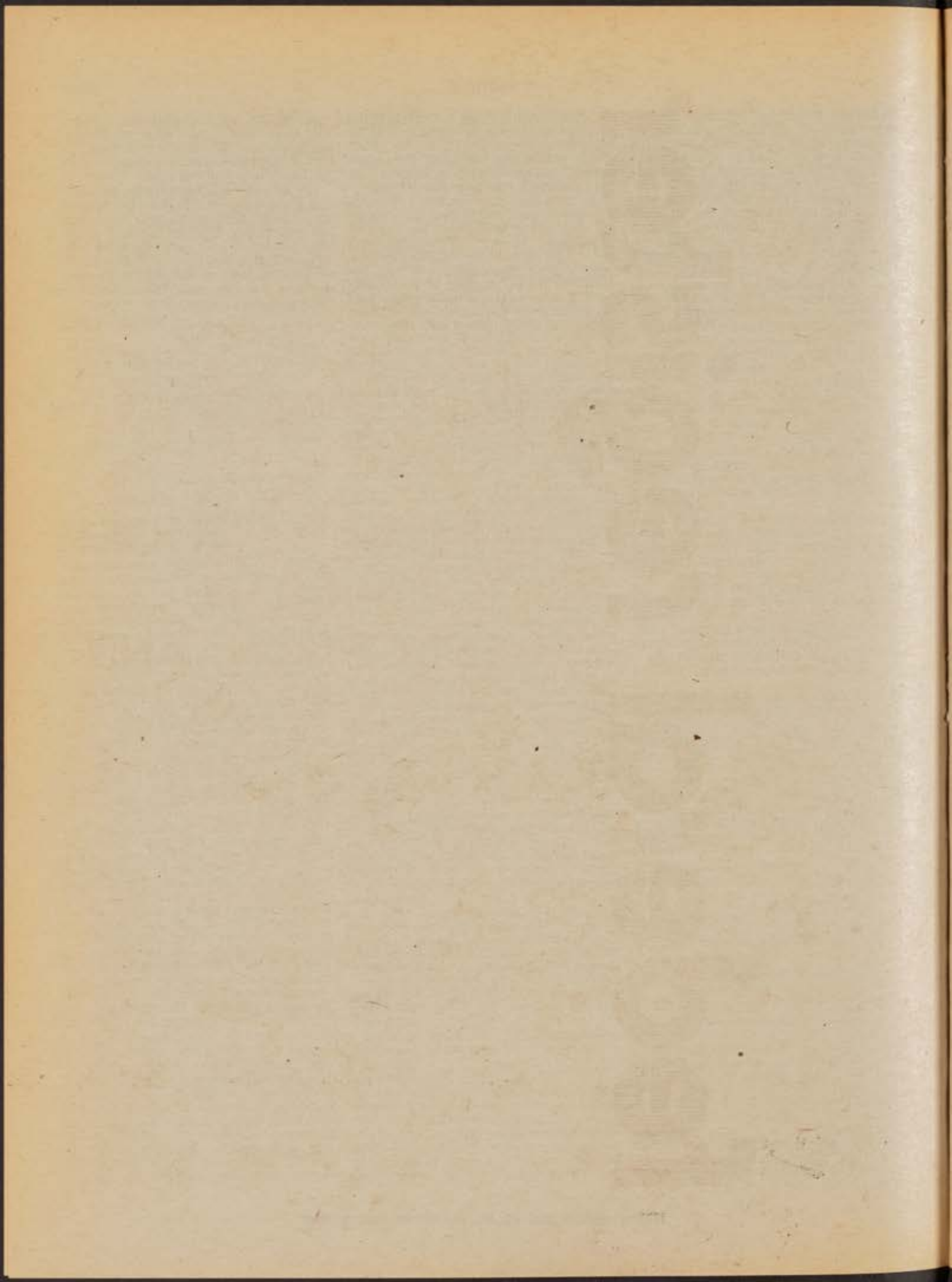
son. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the acquisition of such shares and at the time of such sale.

(c) In the case of transactions occurring more than 60 days after the granting of this exemption, the plan does not pay a sales commission in connection with such acquisition or sale.

(d) All other dealings between the plan and the investment company, the investment adviser or principal underwriter for the investment company, or any affiliated person of such investment adviser or principal underwriter, are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

[FR Doc.77-10157 Filed 4-1-77; 11:44 am]



**federal register**

**FRIDAY, APRIL 8, 1977**

**PART III**



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**DEPARTMENT OF  
HEALTH,  
EDUCATION, AND  
WELFARE**

**Office of Education**



**STUDENT ASSISTANCE  
PROGRAMS**

**Proposed Rules**

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[ 45 CFR Parts 144, 175, 176, and 190 ]

### NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY, SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT, AND BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAMS

#### Proposed Rulemaking on Student Eligibility for Payment of Funds

Under the authority contained in section 497(e), Subpart 1 of Part F of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1088f(e)), the Commissioner of Education is giving notice that he proposes to issue, with the approval of the Secretary of Health, Education, and Welfare, the following regulation governing student eligibility for assistance through programs under Title IV.

#### EXPLANATION OF NEED FOR REGULATIONS

Section 132 of the Education Amendments of 1976, Pub. L. 94-482, 90 Stat. 2150, added a new subsection (e) to section 497 of the Higher Education Act of 1965, as amended, which deals with student eligibility for assistance under Title IV of the Act. The new subsection sets forth certain conditions which must be met if a student is to receive payments under that Title. The text of section 497 (e) is as follows:

(e) Any student assistance received by a student under this title shall entitle the student receiving it to payments only if—

(1) that student is maintaining satisfactory progress in the course of study he is pursuing, according to the standards and practices of the institution at which the student is in attendance, and

(2) that student does not owe a refund on grants previously received at such institution under this title, or is not in default on any loan from a student loan fund at such institution provided for in Part E, or a loan made, insured, or guaranteed under this title for attendance at such institution.

The Commissioner is adding to Parts 144, 175, 176, and 190 of Title 45 of the Code of Federal Regulations provisions required by Section 497(e). The provisions deal with conditions governing the denial of payments to students; the definition, determination, and effect of student-owned refunds; the attribution of grant funds determined to be a student-owned refund; and the definition, determination and effect of student default on loans.

#### SUMMARY OF COMMENTS PREVIOUSLY RECEIVED

The Commissioner published in the FEDERAL REGISTER, Vol. 41, No. 230, Monday, November 29, 1976, a Notice of Intent to Issue Regulations implementing the provisions of the Education Amendments of 1976 (41 FR 52410). At page 52412, comments were invited concerning the implementation of section 132. Five public conferences were held at various locations between December 13-17, 1976, at which the Office of Education received comments on this and

other provisions of the Education Amendments. Further written comments were received through December 30, 1976. The following is a summary of the comments received and the Office of Education's response.

*Comment.* Three commenters felt that it might be of benefit to institutions in setting reference points for determining what constitutes "satisfactory progress" if the Commissioner were to define broadly, or establish minimum standards in this regard, in the regulations.

*Response.* This suggestion has been reviewed in the light of Section 497(e). The statute provides that a student is to be maintaining satisfactory progress according to the standards and practices of the institution; thus no minimum standards have been included in the proposed regulations. An institution which lacked such standards would, however, be precluded from making any payments to students under Title IV until it adopted standards.

*Comment.* Another commenter cited the practice of his own institution, which provides special consideration for what are felt to be "marginal" students, or "slow starters." The institution deems such students to be making "satisfactory progress" if they complete a normal four-year undergraduate program in not more than five academic years.

*Response.* This type of standard would be compatible with the statute if the institution's standards of satisfactory progress allow for five years for completion of the undergraduate program.

*Comment.* Another commenter noted that, under present BEOG regulations, students who are allowed to enroll at an institution and who are in attendance and in good standing at the institution are entitled to receive payments without reference to whether they are making "satisfactory progress" as defined by the institution.

*Response.* The new regulations would not eliminate this provision, but would require that students also be making satisfactory academic progress in order to receive payments of BEOG awards or any other payments under Title IV of the Act.

The National Direct Student Loan Program Regulations being amended, 45 CFR 144, can be found in the FEDERAL REGISTER of November 24, 1976 (41 FR 51946-51973). For the convenience of the reader the section being amended, § 144.15 (45 CFR 144.15) is set out in full. However, comments are requested only on paragraphs (c) through (f) of that section.

The College Work Study Program Regulations being amended, 45 CFR 175, can be found in the FEDERAL REGISTER of September 1, 1976 (41 FR 36872-36895). For the convenience of the reader the section being amended, § 175.9 (45 CFR 175.9) is set out in full. However, comments are requested only on paragraphs (g) through (j) of that section.

The Supplemental Educational Opportunity Grant Program Regulations being amended, 45 CFR 176, can be found in the FEDERAL REGISTER of No-

vember 24, 1976 (41 FR 51973-51982). For the convenience of the reader the sections being amended, §§ 176.14 and 176.17, are set out in full. However, comments are requested only on paragraph (g) of § 176.14 and paragraphs (c) through (f) of § 176.17.

The Basic Educational Opportunity Grant Program regulations being amended, 45 CFR 190, can be found in title 45 of the Code of Federal Regulations. For the convenience of the reader the sections being amended, §§ 190.75 and 190.77, are set out in full. However, comments are requested only on paragraphs (c) through (f) of § 190.75 and paragraph (b) of § 190.77.

The implementation of section 132 of the Education Amendments of 1976, Pub. L. 94-482, for the State Student Incentive Grant Program and the Guaranteed Student Loan Program will be handled in a separate document.

#### INSTRUCTIONS CONCERNING COMMENTS

Interested persons are invited to direct comments concerning these proposed regulations to:

Mr. John R. Proffitt, Director, Division of Eligibility and Agency Evaluation, Room 3030, Regional Office Building 3, 7th and D Streets SW, Washington, D.C. 20202. Telephone: (202) 245-9873.

In order for comments to receive full consideration they should be received not later than 4:30 p.m. on May 10, 1977. The Commissioner will not acknowledge the comments individually, but they will be available for inspection in Room 4068, Regional Office Building 3, between 8:30 a.m. and 4 p.m., Monday through Friday.

Public hearings on these proposed regulations will be held at times, dates, and locations to be announced in a forthcoming issue of the FEDERAL REGISTER.

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

Dated: February 18, 1977.

WILLIAM F. PIERCE,  
Acting Commissioner  
of Education.

Approved: March 31, 1977.

JOSEPH A. CALIFANO, Jr.,  
Secretary of Health, Education,  
and Welfare.

#### PART 144—NATIONAL DIRECT STUDENT LOAN PROGRAM

Section 144.15 of Part 144 of Title 45 of the Code of Federal Regulations is amended to read as follows:

##### § 144.15 Disbursement of loans.

(a) Except as provided in paragraphs (c) through (f) of this section, a loan for an academic year shall be advanced by the institution to the student borrower in equal installments in each semester, trimester, or quarter if the institution uses such academic periods (payment period); otherwise, for those institutions not using such academic periods, ad-

vances shall be made at least twice per academic year with one advance being at the beginning and the other at the midpoint of that academic year.

(b) Except as provided in paragraphs (c) through (f) of this section, a loan for a period shorter than an academic year shall be advanced by the institution to the student borrower in such installments as are deemed appropriate so as to enable the borrower to apply such payments to the costs reasonably necessary for his attendance at the institution during the academic period for which the loan was approved; except that no borrower may receive, during a given academic period, a loan in an amount in excess of the amount of his need for such a loan during that period, determined pursuant to § 144.14.

(c) No advance of funds may be made unless the institution determines that the borrower:

(1) Is maintaining satisfactory progress in the course of study he is pursuing, according to the standards and practices of the institution at which the student is in attendance;

(2) Is not in default on any loan made from a student loan fund at that institution or on a loan made, insured, or guaranteed under the Guaranteed Student Loan Program (Title IV-B, HEA) for attendance at such institution; and

(3) Does not owe a refund on grants previously received for attendance at such institution under the Basic Educational Opportunity Grant Program, the Supplemental Educational Opportunity Grant Program, or the State Student Incentive Grant Program.

(d) Notwithstanding paragraph (c) of this section, if an institution at the beginning of a payment period determines that the student is not maintaining satisfactory progress, but is able prior to the close of that payment period to reverse that determination, it may advance the loan installment for that period to the student; if that determination is made subsequent to the close of that period no funds may be advanced to the student for that period, nor may the student's award be adjusted to reflect the loss of aid for that period. For purposes of this paragraph, a payment period is the period for which an advance is made under paragraph (a) and (b) of this section.

(e) Notwithstanding paragraph (c) of this section: (1) If a student receives an overpayment, and thus owes a refund, on a grant for attendance at that institution because of institution error, the institution may disburse funds to that student, assuming the student is otherwise eligible to receive such funds, if that student acknowledges in writing the amount of the overpayment and agrees to pay the refund in a reasonable period of time.

(2) If a student receives an overpayment, and thus owes a refund on a Basic Grant awarded for attendance at an institution, that institution may disburse student aid funds to that student, assuming the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the

academic year in which the Basic Grant occurred by adjusting subsequent Basic Grant payments due to the student for that year.

(3) If a student receives an overpayment, and thus owes a refund on a Supplemental Educational Opportunity Grant awarded for attendance at an institution, that institution may disburse student aid funds to that student, assuming the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the grant overpayment occurred by adjusting subsequent financial aid payments due to the student for that year.

(f) In determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, the institution may rely on a written statement from the student that he is not in default on a Guaranteed Student Loan made for the purpose of attending that institution.

(g) For purposes of this section a program of training of at least six months duration to prepare students for gainful employment is a recognized occupation shall be considered an academic year.

(h) Loan payments from a Fund shall be evidenced in the institution's records by cancelled checks or vouchers, or, if the institution elects any other method of disbursement, by a clear audit trail including an acknowledgement of receipt from each borrower indicating the method by which payments to him were made.

(i) Loan payments from a Fund shall not be made unless the borrower has filed with the institution the affidavit required pursuant to § 144.9(f) of this part and the institution has complied with the Truth in Lending requirements of Regulation Z (12 CFR 226).

(20 U.S.C. 424, 1087cc.)

#### PART 175—COLLEGE WORK-STUDY PROGRAM

Section 175.9 of Part 175 of Title 45 of the Code of Federal Regulations is amended to read as follows:

§ 175.9 Eligibility and selection of students.

(a) *Eligibility.* Except as provided in paragraphs (g) through (j) of this section, a student enrolled in an institution of higher education is eligible for part-time employment under this part if such student:

(1) Is a national of the United States, is in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territory of the Pacific Islands;

(2) Has been accepted for enrollment as at least a half-time student at the institution or, in the case of a student already attending the institution, is enrolled as at least a half-time student and is in good standing as an undergraduate, graduate, or professional student.

(3) Shows evidence of academic or creative promise and is capable, in the

opinion of the institution, of maintaining good standing in such course of study while employed under this program; and

(4) Is in need of the earnings from such employment in order to pursue a course of study at the institution.

(b) *Eligibility of area vocational school students.* Except as provided in paragraphs (g) through (j) of this section, a student enrolled in an area vocational school is eligible for part-time employment under this part if, in addition to the conditions described in paragraphs (a) (1) through (4) of this section, such student:

(1) Has a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; and

(2) Is pursuing a program of education or training which requires at least 6 months to complete and which is designed to prepare the student for gainful employment in a recognized occupation.

(c) *Programs of study abroad.* Except for in paragraphs (g) through (j) of this section, a student participating in a program of study abroad will be considered to be enrolled in his "home" institution if (1) the program of study abroad is arranged or approved in advance by the home institution and (2) the student's academic performance during the program of study abroad becomes a part of his permanent academic record at the home institution in the same manner as if performed at that institution.

(d) *Need.* Except as provided for in paragraphs (g) through (j) of this section, (1) in determining whether a student is in need as described in paragraph (a)(4) of this section, the institution shall take into account the student's actual cost of education at such institution as described in § 175.11 and his expected family contribution as determined pursuant to § 175.12.

(2) A member of a religious community, society, or order who by direction of his or her community, society, or order is pursuing a course of study in an institution or who receives support and maintenance from the community, society, or order shall be deemed not to have financial need.

(e) *Institutional responsibility.* Except as provided for in paragraphs (g) through (j) of this section, each institution participating in the College Work-Study Program shall be responsible for determining the eligibility of the students participating in its program regardless of whether the students will be engaged in work for the institution itself or for a public or private non-profit organization.

(f) *Selection.* Except as provided for in paragraphs (g) through (j) of this section, an eligible institution shall make employment under the Work-Study Program, or equivalent employment offered or arranged for by the institution, reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof. In the event that requests for employment exceed available funds, the institution shall

give preference in the awarding of employment to those of its students with the greatest financial need. In determining such need the institution shall take into account grant assistance provided such student from any public or private source including grant funds which the student is entitled to receive under the Basic Educational Opportunity Grants Program, whether or not he has applied for such funds. The institution's selection procedures shall be uniformly applied, set forth in writing, and maintained in the files of the institution's office which selects student aid recipients. All applications for employment under this part shall be maintained on file by the institution as specified in § 175.28(c) (2).

(g) No student may be employed under this part unless the institution determines that the student:

(1) Is maintaining satisfactory progress in the course of study he is pursuing, according to the standards and practices of the institution at which the student is in attendance;

(2) Is not in default on any loan made from a student loan fund at that institution or on a loan made, insured, or guaranteed under the Guaranteed Student Loan Program (Title IV-B, HEA) for attendance at such institution; and

(3) Does not owe a refund on grants previously received for attendance at such institution under the Basic Educational Opportunity Grant Program, the Supplemental Educational Opportunity Grant Program, or the State Student Incentive Grant Program.

(h) Notwithstanding paragraph (g) of this section, if an institution at the beginning of a payment period determines that the student is not maintaining satisfactory progress, but is able prior to the close of that payment period to reverse that determination, it may provide employment under this part of that period to the student; if that determination is made subsequent to the close of that period no employment may be provided to the student for that period, nor may the student's award be adjusted to reflect the loss of aid for that period. For the purposes of this paragraph, a payment period is a semester, trimester, or quarter; however, for those institutions which do not utilize such periods it is the period between the beginning of an academic year and the midpoint and the midpoint to the end of that year.

(1) Notwithstanding paragraph (g) of this section: (1) If a student receives an overpayment, and thus owes a refund, on a grant for attendance at that institution because of institutional error, the institution may provide employment to that student if that student acknowledges in writing the amount of the overpayment and agrees to repay the refund in a reasonable period of time.

(2) If a student receives an overpayment and thus owes a refund on a Basic Educational Opportunity Grant awarded for attendance at an institution, that institution may provide employment to that student, assuming the student is

otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the Basic Educational Opportunity Grant occurred by adjusting subsequent Basic Educational Opportunity Grant payments due to the student for that year.

(3) If a student receives an overpayment, and thus owes a refund on a Supplemental Educational Opportunity Grant awarded for attendance at an institution, that institution may provide employment to that student, assuming the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the grant overpayment occurred by adjusting subsequent financial aid payments due to the student for that year.

(j) In determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, the institution may rely on a written statement from the student that he is not in default on a Guaranteed Student Loan made for the purpose of attending that institution.

(42 U.S.C. 2754)

#### PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS PROGRAM

Section 176.14 of Part 176 of Title 45 of the Code of Federal Regulations is amended to read as follows:

§ 176.14 Coordination of student financial aid programs, grant amount, and overaward.

(a) *Coordinating official.* The institution shall appoint an official who shall have the responsibility of coordinating the program covered by this part with the institution's other Federal and non-Federal programs of student financial aid.

(b) *Total award.* The institution shall not award a Supplemental Grant to a student in an amount which, when combined with all of the resources made available to the student from Federal and non-Federal sources, would exceed the difference between the student's cost of education and his expected family contribution, as determined in accordance with one of the need analysis systems or methods of calculation approved by the Commissioner pursuant to § 176.13; Provided, however, that in no event may the total amount of aid received from all Federal and non-Federal sources exceed the student's cost of education.

(c) *Resources.* For purposes of paragraph (b) of this section, the term "resources made available to the student from Federal and non-Federal sources" includes, but is not limited to, the amount of funds a student is entitled to receive under the Basic Educational Opportunity Grants Program, regardless of whether the student has applied for such funds, any waiver of tuition and fees, any scholarship or grant including Supplemental Educational Opportunity Grants and athletic scholarships, any fellowship or assistantship, any loan made

under the Guaranteed Student Loan Program (Title IV-B of the Higher Education Act of 1965) except in cases in which paragraph (c) of this section applies, any long-term loan made by the institution other than under the Guaranteed Student Loan Program, and any expected net earnings from employment during periods for which the student receives a grant. For purposes of this section "net earnings" means gross earnings minus required withholdings and any costs incidental to obtaining such earnings.

(d) *Treatment of Guaranteed Loans.*

(1) Except as provided in paragraph (d) (2) of this section, loans made under the Guaranteed Student Loan Program shall not be considered a student resource and may be used to satisfy the expected family contribution of the borrower calculated in accordance with § 176.12. If the amount of such a loan exceeds the borrower's expected family contribution, only such excess shall be considered a student resource.

(2) Loans for which interest benefits are payable under section 428 of Title IV-B of the Higher Education Act of 1965, as amended (20 U.S.C. 1078), shall be considered a student resource and may not be used to satisfy a student's expected family contribution if the borrower has adjusted family income of \$25,000 or more as determined in accordance with applicable Guaranteed Student Loan Program Regulations (45 CFR Part 177).

(e) *Administrative responsibility.* The institution's responsibility under paragraph (b) of this section shall extend only to those resources which the institution itself makes available to the student, or about which it knows or has reason to know or can reasonably anticipate at the time that Supplemental Grant funds are disbursed to the student. The amount of net earnings from any employment provided by the institution for any academic year and/or special session covered by the grant award shall be deemed to have been known by the institution at the time of disbursement of such grant.

(f) An institution will be deemed to have violated the requirements of this section only if the sum of all the resources made available to the student, including assistance under this part, exceeded the student's need by more than \$100. However, if the resources made available to the student included compensation for work-study employment and the student earned additional money from other employment, the institution will be deemed to have violated the requirements of this section only if the sum of the assistance received by the student exceeded the student's need by more than \$200.

(g) Calculation of student owed refund for grant funds disbursed directly to the student. A student owed refund is calculated as follows: (1) Determine the amount of aid disbursed to the student for a payment period for room and board costs and for the transportation allowance included by the institution in the student's budget which was not paid to the institution by the student nor credited to the student's account. For the



purposes of this section, a payment period is a period of time covered by the applicable disbursement.

(2) If a student withdraws from or is terminated by an institution prior to the institution's scheduled start of classes, all funds described in paragraph (g) (1) of this section shall be considered an overpayment to be refunded.

(3) If a student withdraws from or is terminated by an institution between the institution's scheduled start of classes and the midpoint of the payment period: (i) Determine the total number of days within the payment period and divide that number in half to determine the number of days to the midpoint of that payment period; (ii) subtract the number of days the student was enrolled during that period from the number of days making up the midpoint; (iii) divide the remainder obtained in paragraph (g) (3) (ii) of this section by the number of days to the midpoint of that payment period; (iv) multiply the amount disbursed to the student as determined in paragraph (g) (1) of this section by the ratio established in paragraph (g) (3) (iii) of this section.

(4) Any institution of higher education which disburses funds to students on a monthly basis or more frequent intervals, shall be exempt from the provisions of paragraph (g) (3) of this section.

(5) If a student withdraws from, or is terminated by the institution after the midpoint of the payment period, none of the funds described in paragraph (g) (1) of this section shall be considered an overpayment.

(6) If at the time the institution determines whether a student is making satisfactory progress in the course of study he is pursuing, it finds that the student did not (i) attend any classes, (ii) prepare any required work, or (iii) take any final examinations during the prior payment period, any funds described in paragraph (g) (1) of this section shall be considered an overpayment to be refunded.

(7) Determine grant funds to be restored. If a refund is determined under paragraphs (g) (2), (3), and (6) of this section, the amount of grant funds to be restored to the appropriate grant account shall bear the same ratio to the total refund as the grant award bears to the sum of the financial aid (i) disbursed to that student and (ii) credited to his account, for that payment period.

(20 U.S.C. 1088f.)

Section 176.17 of Part 176 of Title 45 of the Code of Federal Regulations is amended to read as follows:

§ 176.17 Payment of grant.

(a) A student's award for an academic year shall be divided among payment periods which correspond to the number of semesters, trimesters, or quarters in the institution's academic year. The amounts which may be paid during any payment period shall be in the same ratio to the student's award for the academic year as the length of that payment period bears to the length of the

academic year at that institution. An institution which does not utilize such academic terms shall reserve at least half of a student's Supplemental Grant for an academic year for payment to him after the midpoint of such academic year. Within each payment period the institution may pay the student at such times and in such installments as the institution determines will best meet his need for such funds.

(b) Before making the initial payment of a Supplemental Grant for any year to a student the institution shall obtain from that student a written acceptance of the grant and a signed statement indicating that the student received notice of the amount of his Supplemental Grant, of the fact that such amount may not exceed 50 percent of the total amount of student financial aid made available to him through the institution, of the nature and source of the other student financial aid made available to him through the institution, and of the fact that the payment of the Supplemental Grant is conditional on the recipient's maintaining satisfactory progress in the course of study he is pursuing according to the regularly prescribed standards and practices of the institution from which he received the grant and on the recipient's carrying an academic workload sufficient to qualify him as at least a half-time student during the academic year.

(c) No payment of funds may be made unless the institution determines that the student:

(1) Is maintaining satisfactory progress in the course of study he is pursuing, according to the standards and practices of the institution at which the student is in attendance;

(2) Is not in default on any loan made from a student loan fund at that institution or on a loan made, insured, or guaranteed under the Guaranteed Student Loan Program (Title IV-B, HEA) for attendance at such institution; and

(3) Does not owe a refund on grants previously received for attendance at such institution under this part, the Basic Educational Opportunity Grant Program or the State Student Incentive Grant Program.

(d) Notwithstanding paragraph (c) of this section, if an institution at the beginning of a payment period determines that the student is not maintaining satisfactory progress, but is able prior to the close of that payment period to reverse that determination, it may make grant payments for that period to the student; if that determination is made subsequent to the close of that period no funds may be advanced to the student for that period, nor may the student's award be adjusted to reflect the loss of aid for that period.

(e) Notwithstanding paragraph (c) of this section: (1) If a student receives an overpayment, and thus owes a refund, on a grant for attendance at that institution because of institutional error, the institution may disburse funds to that student, assuming that the student is otherwise eligible to receive such funds

if that student: (i) Acknowledges in writing the amount of the overpayment and (ii) Agrees to repay the refund in a reasonable period of time.

(2) If a student receives an overpayment and thus owes a refund on a Basic Grant awarded for attendance at an institution, that institution may disburse student aid funds to that student, assuming the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the Basic Grant occurred by adjusting subsequent Basic Grant payments due to the student for that year.

(3) If a student receives an overpayment, and thus owes a refund on a Supplemental Educational Opportunity Grant awarded for attendance at an institution, that institution may disburse student aid funds to that student, assuming that the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the grant overpayment occurred by adjusting subsequent financial aid payments due to the student for that year.

(f) In determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, the institution may rely on a written statement from the student that he is not in default on a Guaranteed Student Loan made for the purpose of attending that institution.

(g) A recipient of a Supplemental Grant under this part shall remain eligible to receive payments only if the recipient: (1) Continues to be in exceptional financial need; (2) maintains satisfactory progress in the course of study he is pursuing according to the regularly prescribed standards and practices of the institution from which he received the grant; and (3) carries an academic workload sufficient to qualify him as at least a half-time student during the academic year.

(20 U.S.C. 1070b.)

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Section 190.75 of Part 190 of Title 45 of the Code of Federal Regulations is amended to read as follows:

§ 190.75 Payment of basic educational opportunity grant awards.

(a) An institution pays a Basic Educational Opportunity Grant to a student on the basis of having determined:

(1) That the student applying for the grant meets the eligibility requirements of § 190.3. In making this determination the institution is entitled to rely on information provided by the student if the institution has no direct independent knowledge with respect to that information;

(2) That the student is enrolled as a full-time, three-quarter time, or half-time student;

(3) The student's actual cost of attendance, calculated in accordance with § 190.51;

(4) The amount of the student's scheduled Basic Educational Opportunity Grant, calculated in accordance with the payment schedule in effect for the period involved;

(5) The amount by which the scheduled Grant Award determined in paragraph (a) (4) of this section should be adjusted for three-quarter and half-time students (this amount is set forth in the disbursement schedule in effect for the period involved); and

(6) The amount, if any, by which the amount determined in paragraph (a) (4) or (5) of this section should be adjusted in accordance with §§ 190.64-190.66.

(b) (1) Institutions shall pay Basic Educational Opportunity Grant awards in equal amounts at least once at the beginning of each semester, trimester, or quarter for those institutions which utilize such academic units. For an institution not utilizing such academic periods, payments shall be made in equal amounts not less than twice during that portion of the school year which falls within the academic year. The institution shall make one payment at the beginning and the other at the midpoint of that portion of the school year which falls within an academic year. In those cases where the student's period of enrollment overlaps two academic years (for instance, the school year extends from February 1 to August 30) and the length of enrollment in either of two academic years is less than three months, only one payment need be made.

(2) Except where prohibited by § 190.76(c), funds paid to a student with respect to an academic period which has already been completed may be paid to such students in one lump sum payment.

(c) (1) Before paying a student an institution shall confirm (i) that the student meets or continues to meet the eligibility requirements of § 190.3 and (ii) that at the beginning of each semester, trimester, or quarter (or for institutions not utilizing such academic periods at the beginning and midpoint of the school year) the student is entitled to receive the amount of grant payment calculated for that period.

(2) If an institution determines at the beginning of a semester, trimester, or quarter, or for institutions not utilizing such academic periods, at the beginning and midpoint of the school year, that the amount calculated for that student no longer reflects the enrollment status of such student at that institution, it shall recalculate the amount of that student's grant payment for that period in accordance with paragraph (a) of this section.

(3) If an institution disburses funds to a student for a particular academic period and during that period the student increases or decreases his academic workload while continuing to meet the eligibility requirements of § 190.3, the institution may, but need not, adjust the amount of the student's grant attributable to that academic period in accordance with this section and with § 190.85.

(4) Except as provided in § 190.78, if an institution disburses funds to a student for a particular academic period

and during that period the student becomes ineligible to participate in the program, the payment applicable to that period need not be returned by the student if such payment was not made on the basis of inaccurate information or statements provided by the student; however, the student shall not receive additional basic grant payments unless he reestablishes his eligibility.

(d) No grant may be paid under this part unless the student to whom it is made has filed with the institution of higher education which he intends to attend, or is attending, an affidavit on a form approved by the Commissioner stating that the money attributable to such grant will be used solely for expenses related to attendance or continued attendance at such institution. The student must sign the affidavit in the presence of a notary public or other person who is legally authorized to administer oaths or affirmations and who does not take part in the recruiting of students for enrollment at such institutions. The notary public or other person must enter his signature and as applicable, his seal or stamp on the affidavit form.

(e) Payments to a student may be made by check or by credit to the student's account with the institution. If payments are made to a student by crediting his account, the institution shall retain a receipt signed by the student for each such transaction and the credit entry to the student's account shall be clearly identifiable.

(f) No payment of funds may be made unless the institution determines that the student:

(1) Is maintaining satisfactory progress in the course of study he is pursuing, according to the standards and practices of the institution at which the student is in attendance;

(2) Is not in default on any loan made from a student loan fund at that institution or on a loan made, insured, or guaranteed under the Guaranteed Student Loan Program (Title IV-B, HEA) for attendance at such institution; and

(3) Does not owe a refund on grants previously received for attendance at such institution under this part, the Supplemental Educational Opportunity Grant Program, or the State Student Incentive Grant Program.

(g) Notwithstanding paragraph (f) of this section, if an institution at the beginning of a payment period determines that the student is not maintaining satisfactory progress, but is able prior to the close of that payment period to reverse that determination, it may make payments for that period to the student; if that determination is made subsequent to the close of that period no funds may be advanced to the student for that period, nor may the student's award be adjusted to reflect the loss of aid for that period.

(h) Notwithstanding paragraph (f) of this section: (1) If a student receives an overpayment, and thus owes a refund, on a grant for attendance at that institution because of institutional error, the

institution may disburse funds to that student, assuming the student is otherwise eligible to receive such funds, if that student acknowledges in writing the amount of the overpayment and agrees to repay the refund in a reasonable period of time.

(2) If a student receives an overpayment and thus owes a refund on a Basic Grant awarded for attendance at an institution, that institution may disburse student aid funds to that student, assuming the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the Basic Grant occurred by adjusting subsequent Basic Grant payments due to the student for that year.

(3) If a student receives an overpayment, and thus owes a refund on a Supplemental Educational Opportunity Grant awarded for attendance at an institution, that institution may disburse student aid funds to that student, assuming the student is otherwise eligible to receive such funds, if the institution can eliminate the overpayment in the academic year in which the grant overpayment occurred by adjusting subsequent financial aid payments due the student for that year.

(4) In determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, the institution may rely on a written statement from the student that he is not in default on a Guaranteed Student Loan made for the purpose of attending that institution.

(20 U.S.C. 1070a.)

Section 190.77 of Part 190 of Title 45 of the Code of Federal Regulations is amended to read as follows:

§ 190.77 Overpayment of a Basic Educational Opportunity Grant.

(a) In the event that an institution makes an overpayment to a student under this part, the institution shall cooperate fully with the Commissioner by making a reasonable effort to effect the return of such overpayment. The institution is not, however, liable for any overpayments which are not recovered unless such overpayment was made by the institution under circumstances where the regulations of the Commissioner clearly indicate that such payment should not have been made.

(b) Calculation of student owed refund for grant funds disbursed directly to the student. (1) Determine the amount of aid disbursed to the student for a payment period for room and board costs and for the transportation allowance included by the institution in the student's budget which was not paid to the institution by the student nor credited to the student's account. For the purposes of this section, a payment period is a period of time covered by the applicable disbursement.

(2) If a student withdraws from or is terminated by an institution prior to the institution's scheduled start of classes, all funds described in paragraph (b) (1)

of this section shall be considered an overpayment to be refunded.

(3) If a student withdraws from or is terminated by an institution between the institution's scheduled start of classes and the midpoint of the payment period, the student's refund shall be calculated as follows: (i) Determine the total number of days within the payment period and divide that number in half to determine the number of days to the midpoint of that payment period; (ii) Subtract the number of days the student was enrolled during that period from the number of days making up the midpoint; (iii) Divide the remainder obtained in paragraph (b) (3) (ii) of this section by the number of days to midpoint of that payment period; (iv) Multiply the amount disbursed to the student as determined in paragraph (b) (1) of this section by the ratio established in (b) (3) (iii) of this section.

(4) Any institution of higher education which disburses funds to students on a monthly basis or more frequent intervals, shall be exempt from the provisions of the paragraph (b) (3) of this section.

(5) If a student withdraws from, or is terminated by the institution after the midpoint of the payment period, none of the funds described in paragraph (b) (1) of this section shall be considered an overpayment.

(6) If at the time the institution determines whether a student is making satisfactory progress in the course of study he is pursuing it finds that the student did not (i) Attend any classes, (ii) Prepare any required work, or (iii) Take any final examinations during the prior payment period, any funds described in paragraph (b) (1) of this section shall be considered an overpayment to be refunded.

(7) Determine grant funds to be restored. If a refund is determined under paragraphs (b) (2), (3), and (6) of this section, the amount of grant funds to be restored to the appropriate grant account shall bear the same ratio to the total refund as the grant award bears to the sum of the financial aid (i) disbursed to that student and (ii) credited to his account, for that payment period.

(20 U.S.C. 1070b.)

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#### [ 45 CFR Part 168 ]

### GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS; PROCEDURES FOR THE LIMITATION, SUSPENSION, OR TERMINATION OF INSTITUTIONAL ELIGIBILITY FOR PROGRAMS UNDER TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

#### Proposed Rulemaking

Under the authority contained in section 497A(a) (4) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088f-1), as added by section 133(a) of Pub. L. 94-482, the Commissioner of Education is giving notice that he proposes to issue, with the approval of the Secretary of Health, Education, and Wel-

fare, the following regulations providing procedures for the limitation, suspension, or termination of institutional eligibility for programs under Title IV of the Higher Education Act, as amended.

#### EXPLANATION OF NEED FOR REGULATIONS

Section 133(a) of the Education Amendments of 1976 added a new section 497A to the Higher Education Act of 1965, as amended. Section 497A(a) (4) authorizes the Commissioner to issue necessary regulations to provide procedures for the limitation, suspension, or termination of the eligibility for any program under Title IV of any otherwise eligible institution when the Commissioner determines, after notice and an opportunity for a hearing, that the institution has violated or failed to carry out any provision of Title IV or the applicable regulations under that title. Section 133(b) (2) directs the Commissioner of Education to issue regulations modifying similar regulations previously issued for the Guaranteed Student Loan Program (45 CFR Part 177, Subpart G), to make them applicable, to the extent possible, to all programs under Title IV of the Act.

The proposed rule promulgates a new Subpart H of Part 168 of Title 45 of the Code of Federal Regulations, establishing procedures for the limitation, suspension, or termination of institutional eligibility for participation in any or all programs under Title IV of the Higher Education Act.

#### SUMMARY OF COMMENTS PREVIOUSLY RECEIVED

The Commissioner published in the FEDERAL REGISTER, Vol. 41, No. 230, Monday, November 29, 1976, a Notice of Intent to Issue Regulations implementing the provisions of the Education Amendments of 1976 (41 FR 52410). On page 52417, comments were invited concerning procedures for the limitation, suspension, or termination of institutional eligibility for programs under Title IV of the Act. Five Public conferences were held at various locations between December 13-17, 1976, at which the Office of Education received comments on this and other provisions of the Education Amendments. Written comments were also received through December 30, 1976. The following is a summary of the comments received and the Office of Education's response.

*Comment.* One commenter recommended simply adopting, for all Title IV programs, the regulations already promulgated for the Guaranteed Student Loan Program particularly those provisions designed to assure due process of law.

*Response.* The Office of Education has retained and adapted many of the previous provisions of the Guaranteed Student Loan Program regulations in the development of this proposed regulation.

*Comment.* Several commenters felt that enforcement of these provisions should only be initiated by reports of violations by students, regulatory bodies, or auditors.

*Response.* The regulations are cast in terms of whether the information that precipitates OE action is reliable and not on the source of that information. Of course, generally, the source of information is directly related to its reliability.

*Comment.* One commenter stated that informal proceedings should not be used in cases of limitation, suspension, or termination. Other commenters suggested case-by-case determination of appropriate action and issuance of a show cause order followed by a staff visit.

*Response.* The Commissioner, in promulgating these proposed regulations, seeks to provide wherever possible for informal, prompt, and voluntary proceedings to correct violations. He has concluded that the majority of violations and alleged violations can and should be resolved in this manner. Therefore, he has provided for informal compliance procedures in § 168.73.

*Comment.* Several commenters felt that preventive measures rather than sanctions should be stressed, and that program reviews should be used.

*Response.* The Commissioner agrees that preventions of violations through program reviews and other methods should be stressed. However, if these are not effective, the remedies and procedures provided in this part will be utilized.

*Comment.* A commenter recommended that, in cases of deficiencies which could lead to limitation, a plan using administrative monies provided under section 493 should be developed to correct the deficiencies.

*Response.* The Commissioner is not legally authorized to require that these funds be used in that manner. The statute provides for institutional discretion in this regard once the expenditures required to carry out the consumer information dissemination activities warranted under section 493A of the Act have been accomplished.

*Comment.* Another commenter recommended that the responsibility within the Office of Education for limiting or removing eligibility should be separate from the responsibility for recommending eligibility.

*Response.* Both of these matters are the responsibility of the Commissioner. However, the procedures for these two functions are not the same and the OE personnel involved with these questions are not necessarily the same.

#### SUPPLEMENTARY INFORMATION

Under section 438(a) (3) of the Higher Education Act, as added by Pub. L. 92-318, the Office of Education issued regulations on February 20, 1975, which provided the Office of Education with a procedural framework in accordance with which it could—

(1) Take emergency action for a limited period of time (7 days) to stop the flow of loans to an institution under the Guaranteed Student Loan Program;

(2) Provide a show cause hearing to an institution on a suspension proceeding, the result of which, by regulation, was limited to 60 days unless limitation

or termination proceedings were started before the suspension ended;

(3) Provide a hearing before an impartial presiding officer in limitation or termination proceedings; and

(4) Provide for reinstatement of institutions after a certain period of time upon a showing that the violations for which they were suspended or terminated were corrected.

The proposed rules establishes similar procedures applicable to all programs under Title IV. Proceedings under the proposed regulation would apply only after an institution, which has met the statutory definitions for eligibility, has both complied with the general provisions governing eligibility for Title IV programs and entered into a special arrangement or agreement to participate in any specific program. These procedures are not applicable to a determination that an institution has or has not met any provision of a statutory definition of eligibility.

The proposed regulation, while similar in many respects to the regulation governing limitation, suspension, or termination proceedings under the Guaranteed Student Loan Program, differs, by reason of statutory differences between the two authorities on which the regulations are based, in two major respects. Section 497A(a)(4) on which this proposed regulation is based, requires the Commissioner to provide a hearing on the record in suspension, limitation, or termination proceedings. It also statutorily limits the period of any suspension to 60 days, unless within that period of time limitation or termination proceedings are initiated. Section 438(a)(3) contained neither of these provisions.

This proposed regulation follows the general format of the regulations issued in Subpart G of Part 177 of Title 45 governing limitation, suspension, or termination of institutional eligibility for the Guaranteed Student Loan Program. These provisions encourage the use of informal compliance procedures. The proposal also allows the Office of Education to take emergency action when it has reliable information that the institution is in substantial violation of Title IV and related regulations, and that a likelihood of substantial loss of funds to the Federal government or to students may occur. The result of emergency action is to withhold additional funds from an institution and to prohibit the institution from making obligations against any student assistance funds which it may have.

The period during which emergency action would be valid is set at 30 days. However, if during that time, suspension or termination proceedings are begun, the Commissioner must provide the institution with an opportunity to show cause that the emergency action is unwarranted, pending the outcome of those proceedings. Administrative experience with the emergency action provided for under the Guaranteed Student Loan Program regulation, limited to 7 days,

has proved that period to be too short even to notify an institution that emergency action has been taken. The greater time period is felt to be necessary to permit the institution and the Office of Education to arrive at a voluntary agreement respecting corrective action.

Suspension proceedings under the proposed rule begin with a notice from the Office of Education, effective no earlier than 20 days after issuance, unless the institution requests a hearing or corrects the violation before that time. Any hearing is on the record before an impartial presiding officer. Only after a suspension becomes effective does the 60-day period begin to run. The 60-day period may be extended beyond that date by agreement of the parties, or, as provided in the statute, until the end of a termination proceeding if that is begun before the 60-day period ends. The effect of a suspension is to remove an institution's eligibility for a limited period of time.

A termination proceeding either ends the eligibility of an institution for any or all Title IV programs, or results in limitation of an institution's eligibility. A termination proceeding is a hearing on the record before an impartial presiding officer. Its procedure parallels that provided for a suspension proceeding.

The Commissioner makes the final decision in a termination proceeding either by adopting the initial decision of the presiding officer, or by deciding an appeal from the initial decision of the presiding officer, if that appeal is filed within 20 days of the initial decision.

The proposed rule not only lists some possible types of limitations that may be imposed on an institution as the result of a termination proceeding, but also, for the first time, sets out in a regulation the effects of a termination on the flow of Title IV assistance funds to both the institution and the students attending it. The regulation provides that the flow of funds to the institution ceases when an adverse decision is issued in a termination proceeding, except for the payment of commitments to students already enrolled and attending that institution before the date of termination. Payments based on such commitments may be paid only through the end of the payment period during which the termination was made. The meaning of the term "payment period" may vary according to specific program regulations.

The proposed regulation also allows the Commissioner, the designated OE official, or the presiding officer to require an institution to take reasonable and appropriate corrective action for violations by making repayments or reimbursements of any funds the institution has improperly received, withheld, disbursed or caused to be disbursed.

The proposed regulation allows reinstatement after termination, subject to a waiting period of 24 months after the decision to terminate. Compliance with certain limitations may be a condition of reinstatement. The proposed regulation provides for reinstatement of full

eligibility, after a limitation decision, subject to a waiting period of 12 months. Such a reinstatement may be subject to other continuing limitations.

The proposed regulation contemplates the bringing of suspension, limitation, or termination proceedings as expeditiously as possible. However, administrative experience under a similar regulation governing the Guaranteed Student Loan Program has shown that the time allowed for taking action under that regulation was unrealistically short. Consequently, the following major differences are proposed for this regulation:

(1) The period of emergency action extends for 30 days (rather than 7 days). If, however, suspension or termination proceedings are begun, and the emergency action continues, the institution is entitled to request a show cause hearing for a determination why the emergency action should not be rescinded altogether;

(2) The effective date of a suspension or termination under the proposed rule may be no earlier than 20 days after sending the notice (rather than 15 days). This additional time will allow the institution ample time to decide upon the response it wishes to file. An institution which appeals the action and requests a hearing is not subject to suspension until the hearing is concluded.

#### INSTRUCTIONS CONCERNING COMMENTS

Interested persons are invited to direct comments concerning these proposed regulations to:

Mr. John R. Proffitt, Director, Division of Eligibility and Agency Evaluation, Room 3030, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. 20202. Telephone: (202) 245-9873.

In order for comments to receive full consideration they should be received not later than 4:30 p.m. on May 10, 1977. The Commissioner will not acknowledge the comments individually, but they will be available for inspection in Room 4068, Regional Office Building 3, between 8:30 a.m. and 4:00 p.m., Monday through Friday.

Public hearings on these proposed regulations will be held at times, dates, and locations to be announced in a forthcoming issue of the FEDERAL REGISTER.

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

Dated: February 11, 1977.

WILLIAM F. PIERCE,  
Acting Commissioner  
of Education.

Approved: March 31, 1977.

JOSEPH A. CALIFANO, JR.,  
Secretary of Health, Education,  
and Welfare.

Chapter I of Title 45 of the Code of Federal Regulations is amended by adding Part 168 to read as follows:

**PART 168—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS**

**Subpart H—Procedures for the Limitation, Suspension, or Termination of Institutional Eligibility for Programs Under Title IV of the Higher Education Act of 1965, as Amended**

- Sec.
- 168.71 Purpose and scope.
- 168.72 Definitions.
- 168.73 Informal compliance procedures.
- 168.74 Emergency action.
- 168.75 Suspension proceedings.
- 168.76 Termination proceedings.
- 168.77 Initial and final decisions.
- 168.78 Verification of mailing dates.
- 168.79 Effect of termination proceeding.
- 168.80 Limitation.
- 168.81 Termination.
- 168.82 Reimbursements, refunds, and offsets.
- 168.83 Reinstatement after termination.
- 168.84 Removal of limitation.

**AUTHORITY:** Sec. 497A(a)(4) of the Higher Education Act of 1965, as added by sec. 133 of Pub. L. 94-482, 90 Stat. 2150-2151, 20 U.S.C. 1088f-1(a)(4), unless otherwise noted.

**Subpart H—Procedures for the Limitation, Suspension, or Termination of Institutional Eligibility for Programs under Title IV of the Higher Education Act of 1965, as amended**

**§ 168.71 Purpose and scope.**

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible institution participating in any or all programs authorized by Title IV of the Higher Education Act of 1965. These rules apply to an institution which violates any provision of that Title or any regulation, special arrangement, agreement or limitation prescribed under that Title. These rules also apply to an institution participating in the Guaranteed Student Loan Program which comes within the terms of 45 CFR 177.66.

(b) This subpart does not apply to a determination (1) that an institution of higher education fails to meet the statutory definition set forth in sections 435(b), 491(b)(3), or 1201(a) of the Act, or (2) that a vocational school fails to meet the statutory definition set forth in section 435(c) of the Act.

(c) This subpart does not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of Title VI of the Civil Rights Act of 1964, which is governed by 45 CFR Parts 80 and 81; Title IX of the Education Amendments of 1972, which is governed by 45 CFR Part 86; or the Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended) which is governed by 45 CFR Part 99.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.72 Definitions.**

"Act" means the Higher Education Act of 1965, as amended.

"Designated OE official" means an official of the U.S. Office of Education, to whom the Commissioner has delegated responsibilities indicated in this subpart.

"Eligible institution" means (1) an institution of higher education, (2) a vocational school, or (3) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Commissioner for purposes of participation in Title IV programs.

(20 U.S.C. 1088f-1(e); 1085(a).)

"Funds" means any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all Title IV programs to an institution or to students enrolled and attending an institution.

"Institution of higher education" means an institution as defined in sec-

tions 435(b), 491(b), and 1201(a) of the Act.

(20 U.S.C. 1085(b), 1088(b), 1141(a).)

"Limitation" means the continuation of an institution's eligibility for any or all Title IV programs subject to compliance with special conditions which the Commissioner has set as a result of a decision in a termination proceeding.

"Suspension" means the removal of an institution's eligibility for any or all Title IV programs for a period of time.

"Termination" means the unqualified removal of an institution's eligibility for any or all Title IV programs for an indefinite period of time.

"Title IV" means Title IV of the Higher Education Act of 1965. The programs under that title, and the governing statutory and regulatory provisions, are as follows:

Program	Statutory provisions	Regulatory provisions
National direct student loan program	Title IV-E, HEA	45 CFR pt. 144.
Educational opportunity center program	Title IV-A-4, HEA	45 CFR pt. 154.
Upward bound program	do	45 CFR pt. 155.
Special services for disadvantaged students program	do	45 CFR pt. 157.
Talent search program	do	45 CFR pt. 159.
College work-study program	Title IV-C, HEA	45 CFR pt. 173.
Supplemental educational opportunity grant program	Title IV-A-2, HEA	45 CFR pt. 176.
Federal, State, and private programs of low-interest loans to vocational students and students in institutions of higher education.	Title IV-B, HEA	45 CFR pt. 177.
Veterans cost-of-instruction payments to institutions of higher learning.	Title IV-A-6, HEA	45 CFR pt. 189.
Basic educational opportunity grant program	Title IV-A-1, HEA	45 CFR pt. 190.
State student incentive grant program	Title IV-A-3, HEA	45 CFR pt. 192.

"Vocational school" means a school as defined in section 435(c) of the Act.

(20 U.S.C. 1085(c).)

(20 U.S.C. 1088f-1(a)(4), unless otherwise noted.)

**§ 168.73 Informal compliance procedures.**

(a) If the Commissioner receives a complaint, or has other information which the Commissioner believes to be reliable, indicating that an institution is, or may be, in violation of applicable laws, regulations, special arrangements, agreements, or limitations, the Commissioner may call the matter to the attention of the institution and may give it a reasonable opportunity—

(1) To respond to the complaint or other information;

(2) To show that the matter has been corrected; or

(3) To submit an acceptable plan to correct the violation and prevent its recurrence.

(b) The procedures provided in this Subpart for suspension or termination need not be delayed during the informal compliance procedure if the Commissioner believes—

(1) The delay would have an adverse effect on any or all Title IV programs, or

(2) The informal compliance procedure will not result in a correction of the alleged violation.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.74 Emergency action.**

(a) The Office of Education, through a designated OE official, may take emergency action to withhold funds from an

institution or its students and to withdraw the authority of an institution to obligate funds under any or all Title IV programs if the designated OE official—

(1) Receives reliable information that an institution is in violation of applicable laws, regulations, special arrangements, agreements, or limitations,

(2) Determines that such action is necessary to prevent the likelihood of substantial loss of funds to the Federal government or to the students at the institution, and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures set forth in this subpart for suspension or termination.

(b) The designated OE official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the action and the basis on which it is taken. The effective date of the action is the date on which the notice is mailed.

(c) An emergency action shall not exceed 30 days unless suspension or termination proceedings are begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of those proceedings, including any appeal to the Commissioner.

(d) If suspension or termination proceedings are begun, the Commissioner shall provide the institution, if it so requests, an opportunity to show cause that the emergency action is unwarranted, pending the outcome of those proceedings.

(20 U.S.C. 1088f-1(a), 1232c(e), 1232d, and section 113(b) of Pub. L. 94-482.)

**§ 168.75 Suspension proceedings.**

(a) *Scope and consequences.* From its effective date, a suspension removes an institution's eligibility for any or all Title IV programs for a period of time not exceeding 60 days unless—

(1) The institution and the designated OE official agree to an extension where the institution has not requested a hearing, or

(2) The designated OE official begins a termination proceeding under § 168.76.

(b) *Procedures.* (1) The designated OE official begins suspension proceedings by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Office of Education to suspend the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent;

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the Office of Education receives, at least 5 days before that date, a request for a hearing or written material indicating why the suspension should not take place; and

(iv) Invite voluntary efforts to correct the violation(s) which led to the commencement of the action.

(2) If the institution does not request a hearing, but submits written material, the designated OE official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed, or

(ii) The suspension is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated OE official sets a date and place for it. The date will be at least 15 days after the designated OE official receives the request. No suspension takes place until a hearing is held.

(4) At the hearing, the presiding officer shall consider any written material presented to him before the hearing or any material or other evidence presented to him during the course of the hearing.

(5) If, after considering the evidence, the presiding officer concludes that the suspension is warranted, the presiding officer may suspend the eligibility of all or part of the institution.

(c) Notice of the suspension must be promptly mailed to the institution. The suspension takes effect either upon the date of mailing or the original proposed effective date stated in the notice of intent, whichever is later.

(d) A suspension shall not exceed 60 days unless termination proceedings are begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of those proceedings, including any appeal to the Commissioner.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.76 Termination proceedings.**

(a) *Scope and consequences.* From its effective date, a termination shall either—

(1) End the eligibility of an institution for any or all Title IV programs, or

(2) Result in limitations on an institution's eligibility.

(b) *Procedures.* (1) The designated OE official begins a termination proceeding, whether or not a suspension proceeding has begun under § 168.75, by sending an institution a notice, by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Office of Education to terminate the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the termination, which shall be at least 20 days after the date of mailing of the notice of intent;

(iii) Inform the institution that the termination will not be effective on the date specified in the notice if the Office of Education receives, at least 5 days before that date, a request for a hearing or written material indicating why the termination should not take place;

(iv) Invite voluntary efforts to correct the violation(s) which led to the initiation of the action.

(2) If the institution does not request a hearing but submits written material, the designated OE official, after considering that material, notifies the institution that:

(i) The proposed termination is dismissed,

(ii) Limitations are effective as of a specified date, or

(iii) The termination is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated OE official sets a date and a place for it. The date will be at least 15 days after the designated OE official receives the request. No proposed termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing on the record.

(5) At the hearing the presiding officer shall consider any written material presented to him before the hearing, or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence the presiding officer concludes that limitation or termination is warranted the presiding officer may limit or terminate the institution's eligibility in whole or in part.

(c) *Expedited hearings.* With the approval of the presiding officer and the mutual consent of the parties, any time schedules specified in this section may be shortened.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.77 Initial and final decisions.**

(a) The presiding officer issues an initial decision in any termination proceeding based on findings of fact and

conclusions of law. Findings of fact shall be based only on evidence considered at the hearing and matters of which official notice has been taken. The initial decision of the presiding officer becomes the Commissioner's final decision 20 days after being issued, unless within that 20-day period the institution or the designated OE official appeals the decision to the Commissioner.

(b) Within a period of time specified by the Commissioner, the party that appeals to the Commissioner may submit any additional written material, including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The opposing party shall respond within such time as the Commissioner specifies. Parties making any submission to the Commissioner must provide a copy to each party that participated in the hearing.

(c) The initial decision of the presiding officer limiting or terminating the institution's eligibility does not take effect pending the appeal, unless the Commissioner determines that a stay would produce a serious and adverse effect upon the programs involved.

(d) In the case of an appeal, the Commissioner issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the decision.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.78 Verification of mailing dates.**

Verification of the Office of Education's mailing dates as referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.79 Effect of termination proceeding.**

A decision adverse to an institution in a termination proceeding may result in a limitation on, or a termination of, the institution's eligibility for any or all Title IV programs.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.80 Limitation.**

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV funds; or

(d) Such other conditions as may be determined to be reasonable and appropriate.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.81 Termination.**

(a) *A termination.* (1) Ends an institution's eligibility for any or all Title IV programs;

(2) Prohibits an institution or the Commissioner from making or increasing financial aid awards;

(3) Prohibits an institution from making any other new obligations against Title IV funds; and

(4) Prohibits further commitments of insurance or reinsurance by the Commissioner under the Guaranteed Student Loan Program for loans to students to attend that institution.

(b) If an institution is terminated during a payment period, any student at that school who has received an award or to whom a commitment has been made before the effective date of the termination may receive payment only for that payment period.

(c) For the purposes of this section (1) a commitment under the Basic Educational Opportunity Grant Program occurs after a student is enrolled and attending the institution and has submitted a valid Student Eligibility Report to the institution or to the Commissioner, if the student is attending an institution which is under the Alternate Disbursement System, and (2) a commitment under the Supplemental Educational Opportunity Grant, College Work-Study, or National Direct Student Loan program occurs when the student is enrolled and attending the institution and has received an award letter from the institution.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.82 Reimbursements, refunds, and offsets.**

(a) The designated OE official, presiding officer, or Commissioner may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment of any funds, to the Office of Education or to designated recipients, which the institution improperly received, withheld, disbursed, or caused to be disbursed, including, but not restricted to (1) With respect to the Guaranteed Student Loan Program—(i) Ineligible interest benefits, special allowances or other claims paid by the Commissioner, and (ii) Discounts, premiums, or excess interest paid in violation of § 177.13 of Title 45 of the Code of Federal Regulations and (2) With respect to all Title IV programs—(i) Refunds due to students under the Title IV regulations, and (ii) any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Office of Education, the Office of Education may offset its claims against any benefits or claims due to the institution.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.83 Reinstatement after termination.**

(a) An institution whose eligibility for any or all Title IV programs has been terminated may not file a request for re-

instatement of its eligibility before the expiration of 24 months from the effective date of its termination.

(b) After the minimum termination period, the institution may request reinstatement of its eligibility before the writing and must show that the institution has corrected the violations on which the termination was based and that it meets all qualifications for eligibility.

(c) Not later than 60 days after receipt of the request for reinstatement, the Commissioner shall respond to the institution—

- (i) Granting its request;
- (ii) Denying its request; or
- (iii) Granting the request subject to limitations.

(d) (1) If the Commissioner denies the institution's request, or allows reinstatement subject to limitation(s), the institution, upon request, will be granted an opportunity to show cause why it should be fully reinstated.

(2) In the event the Commissioner's response allows reinstatement subject to limitation, the institution, by requesting a show cause meeting, shall not be deemed to waive its rights to participate in any or all Title IV programs if it complies with the reinstatement limitations pending the outcome of the meeting.

(20 U.S.C. 1088f-1(a)(4).)

**§ 168.84 Removal of limitation.**

(a) An institution whose eligibility for any or all Title IV programs has been limited may not apply for removal of the limitation of its eligibility before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Commissioner shall respond to the institution—

- (i) Granting its request;
- (ii) Denying its request; or
- (iii) Granting the request subject to other limitations.

(d) If the Commissioner denies the request, or establishes other limitations, the institution upon request will be granted an opportunity to show cause why its eligibility should be fully reinstated.

(e) The institution's request for a show cause meeting shall not be deemed to waive its right to participate in any or all Title IV programs if it complies with such continuing limitations pending the outcome of the meeting.

(20 U.S.C. 1088f-1(a)(4).)

[FR Doc. 77-10127 Filed 4-7-77; 8:45 am]

**[ 45 CFR Part 178 ]**

**STUDENT CONSUMER INFORMATION SERVICES**

**Proposed Rulemaking**

Under the authority contained in section 493A of Part F of Title IV of the

Higher Education Act of 1965 as amended (20 U.S.C. 1088b-1), the Commissioner of Education is giving notice that he proposes to issue, with the approval of the Secretary of Health, Education, and Welfare, the following regulations governing institutional and financial assistance information for students.

**EXPLANATION OF NEED FOR REGULATIONS**

Section 131(b) of the Education Amendments of 1976 added a new section 493A to the Higher Education Act of 1965, as amended, dealing with institutional and financial assistance information for students (consumer information dissemination activities).

The statute provides that effective July 1, 1977, institutions of higher education and other eligible institutions which receive an administrative cost allowance because of participation in the Basic Educational Opportunity Grant, College Work-Study, National Direct Student Loan, Supplemental Educational Opportunity Grant, or Guaranteed Student Loan programs must provide student consumer information dissemination activities to prospective and enrolled students who request such information. The types of information to be disseminated include, but are not limited to, a description of the student financial aid programs available at the institution, including a statement of the student's rights and responsibilities under the programs authorized under Title IV of the Act, the school's academic program and educational costs, its student retention rate, and its refund policy. This information must be made readily available, through "appropriate publications and mailings," to all current students and to any prospective student upon request. The law also requires that effective July 1, 1977, an employee or group of employees be available on a full-time basis at the institution to assist students or potential students in obtaining this information. The Commissioner, however, may waive the requirement that a full-time person be assigned to these duties when the total institutional enrollment or the number of students receiving assistance from programs under Title IV of the Act is too small to necessitate a full-time employee.

The Commissioner is promulgating a new Part 178 of Title 45 of the Code of Federal Regulations to assure uniform procedures for administration of these new provisions.

**SUMMARY OF COMMENTS PREVIOUSLY RECEIVED**

The Commissioner published in the FEDERAL REGISTER, Vol 41, No. 230, Monday, November 29, 1976, a Notice of Intent to Issue Regulations implementing the provisions of the Education Amendments of 1976 (41 FR 52410). On page 52416, comments were invited concerning institutional and financial assistance information for students. Five public conferences were held at various locations between December 13-17, 1976, at which the Office of Education received comments on this and other provisions of the Education Amendments. Written com-

ments were also received through December 30, 1976. The following is a summary of the comments received and the Office of Education's response.

**Comment.** One commenter suggested that the student consumer information provisions and the information provision requirements of the Guaranteed Student Loan Program should be closely related.

**Response.** To the extent that legal provisions for the two programs are similar, the two regulatory provisions will be similar or comparable.

**Comment.** Five commenters addressed the definition of "appropriate publications and mailings." One, for example, suggested that the term be defined as "those publications and information generally made available to students for the purposes of explaining the institution's policies and practices." Another commenter suggested that the term be limited to two or three standard categories, such as catalogues and course schedules.

**Response.** The Commissioner does not want to define the specific documents that must be used as an appropriate publication or mailing, because he wants to allow flexibility for institutions to use existing documents to the extent possible. Instead, the proposed regulations specify the categories of information that must be disseminated and the fact that the appropriate publications must be available to enrolled or prospective students either at no charge or at a charge not to exceed the actual unreimbursed cost of the publications.

**Comment.** The statute requires that the information to be made available to students and prospective students include data regarding student retention. Six comments were received concerning retention rates. These reflected opposition to any attempt by the Commissioner to establish a uniform retention rate policy, since the statute simply requires publication of this information. Other suggestions, however, included recommendations that the Office of Education provide a definition of "retention" to institutions; a suggestion that a retention rate table for the most recent year available would satisfy the requirements of the statute; and suggestions of detailed procedures for establishing retention rates.

**Response.** The Commissioner is aware of the difficulties of providing single definitions of retention rate and completion rate that are applicable to all institutions. However, he is also concerned that these retention data enable students to make meaningful comparisons among institutions. The proposed regulations, therefore, provide a flexible definition of "retention," while specifying a three-year period over which the rates must be computed. The proposed regulations also specify that data on completion rates of each program in which a student is interested be provided to that student, if such data are available at the institution. However, the Commissioner would welcome further suggestions for the treatment of this topic. Each suggestion should reflect consideration both of the

feasibility of institutions collecting the data suggested and the usefulness of such information to students.

**Comment.** Several comments addressed the requirement that staff be made available full-time to assist students or prospective students in obtaining the types of information called for in the statute. One commenter suggested that regulations specify whether information dissemination would be such an employee's sole responsibility at the institution and whether entirely new staff would have to be hired. It was also suggested that regulations distinguish between an "available" full-time employee and an individual "assigned" to provide student consumer information.

**Response.** Although the statute requires the equivalent of a full-time employee to provide information, the Commissioner does not interpret that to mean that a full-time person must necessarily be hired specifically for this purpose, nor does the Commissioner interpret this necessarily to be the sole responsibility of an employee, if there is insufficient demand for such services.

**Comment.** One commenter suggested that regulations should include the criteria to be employed by the Commissioner for waiving the requirement that a full-time employee be available to assist students or prospective students in obtaining information. Another commenter suggested a procedure by which such waivers could be appropriately determined.

**Response.** The Commissioner has included in the proposed regulations a specific number of aid recipients and a specific size of student enrollment below which a waiver will be granted. Furthermore, the proposed regulations also provide for waivers being granted upon evidence of insufficient need for a full-time employee. However, the Commissioner would especially welcome suggestions, with supporting evidence or justification, concerning the appropriate figures to use for enrollment and participating students when granting a waiver.

#### INSTRUCTIONS CONCERNING COMMENTS

Interested persons are invited to direct comments concerning these proposed regulations:

Mr. John R. Proffit, Director, Division of Eligibility and Agency Evaluation, Room 3030, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. 20202, Telephone: (202) 245-9873.

In order for comments to receive full consideration they should be received not later than 4:30 p.m. on May 10, 1977. The Commissioner will not acknowledge the comments individually, but they will be available for inspection in Room 4068, Regional Office Building 3, between 8:30 a.m. and 4:00 p.m., Monday through Friday.

Public hearings on these proposed regulations will be held at times, dates, and locations to be announced in a forthcoming issue of the FEDERAL REGISTER.

The Office of Education has determined that this document does not contain a major proposal requiring prep-

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

Dated: February 18, 1977.

WILLIAM F. PIERCE,  
Acting Commissioner of Education.

Approved: March 31, 1977.

JOSEPH A. CALIFANO, Jr.,  
Secretary of Health,  
Education, and Welfare.

1. Part 178 of Title 45 of the Code of Federal Regulations is redesignated as Part 177a of that title.

2. Part 178 of Title 45 of the Code of Federal Regulations is added to read as follows:

#### PART 178—STUDENT CONSUMER INFORMATION SERVICES

Sec.	
178.1	Purpose of scope.
178.2	Definitions.
178.3	Information dissemination requirements.
178.4	Information dissemination topics.
178.5	Availability of employees for information dissemination purposes.
178.6	Use of funds.
178.7	Compliance procedures and records.
178.8	Audits—non-Federal.

**AUTHORITY:** Sec. 493A of Title IV of the Higher Education Act of 1965 as added by sec. 131 of Pub. L. 94-482, 90 Stat. 2148-2149 (20 U.S.C. 1088b-1), unless otherwise noted.

#### § 178.1 Purpose and scope.

This part establishes rules for the dissemination of information required by section 493A of the Higher Education Act of 1965. It applies to any institution or school which receives a payment under section 411(d), 428(e), or 493 of that Act (20 U.S.C. 1070a(d), 1078(e) and 1088b). Section 411(d) refers to payments made to an institution of higher education under the Basic Grant Program. Section 428(e) refers to payments to an eligible institution under the Guaranteed Student Loan Program. Section 493 refers to payments received by an institution of higher education because of its participation in the Supplemental Educational Opportunity Grant, College Work-Study, or National Direct Student Loan Programs and to payments received by an area vocational school because of its participation in the College Work-Study Program.

(20 U.S.C. 1088b-1.)

#### § 178.2 Definitions.

As used in this part:

- (a) "Act" means the Higher Education Act of 1965, as amended.
- (b) "Academic year" means the period of time between July 1 of one year and June 30 of the subsequent year.
- (c) "Administrative cost allowance" means the payment to any institution pursuant to section 411(d), 428(e), or 493 of the Act.
- (d) "Institution" means an institution of higher education as defined in section 1201(a) of the Act, a proprietary institution of higher education as defined in section 491(b) of the Act, an eligible institution as defined in section 435 of the Act, or an area vocational school as de-



defined in section 8(2) of the Vocational Education Act of 1963.

(e) "Prospective student" means any individual who has contacted an institution requesting information for the purpose of enrolling at that institution.

(f) "Student financial aid program" means any program available to a student attending an institution that provides financial assistance to meet the costs of attending that institution and for which the primary criterion of student eligibility is demonstrated financial need for the assistance because of financial conditions of the student or his family. For purposes of compliance with the requirements of this part, the term includes, but is not limited to, all student financial aid programs authorized under Title IV of the Act, all programs administered by the State in which the institution is located, all major national programs offered by private sources, and any other programs of which a financial aid administrator at an institution should reasonably be aware.

(20 U.S.C. 1088b-1.)

#### § 178.3 Information dissemination requirements.

(a) Each institution which receives an administrative cost allowance for any academic year shall, for that year, (1) prepare material, if necessary, on the topics set forth in § 178.4 and (2) disseminate that information through appropriate publications and mailings to those prospective students or enrolled students who request it.

(b) An appropriate publication or mailing is one that is provided to an enrolled or prospective student at no charge to the student or at a charge which does not exceed the actual unreimbursed cost to the institution for its preparation and publication.

(20 U.S.C. 1088b-1.)

#### § 178.4 Information dissemination topics.

The information to be prepared and disseminated to students includes:

(a) A description of all student financial aid programs available to students who enroll at that institution, including the procedures and forms for applying for such aid, the student eligibility requirements, the criteria for selecting recipients from the group of eligible applicants, and the criteria for determining the amount of a student's award;

(b) A statement of the rights and responsibilities of students receiving financial aid under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, or Guaranteed Student Loan Programs. This information shall include:

(1) Criteria for continued eligibility for each program, including the financial conditions which must be met;

(2) Criteria for determining that a student is in good standing and maintaining satisfactory progress in his course of study, as required by section 497(e) (1) of the Act for the purposes of receiving financial aid payments, and the

criteria by which a student who has failed to maintain satisfactory progress or good standing may reestablish his eligibility for payment;

(3) The means by which payment of awards will be made to students and the frequency of such payments;

(4) The terms of and expected schedules for repayment of any loan received by a student as part of his student financial aid; and

(5) The general conditions and terms applicable to any employment provided to a student as part of his financial aid;

(c) The cost of attending the institution, including tuition and fees, books and supplies, estimates of typical room and board and transportation costs for students living on-campus, off-campus, or at home, and any additional cost of the program in which the student is enrolled or expresses a specific interest;

(d) The refund policy of the institution for the return of unearned tuition and fees or other refundable portion of cost paid to that institution, as described in paragraph (c) of this section;

(e) The academic program of the institution, including the current degree programs and other educational and training programs; the instructional, laboratory, and other physical facilities which relate to the academic program; and the faculty and other instructional personnel;

(f) Data regarding student retention at the institution, including, for each of three most recent academic years, the number of students who enrolled and were still enrolled at the end of that year or who graduated from the institution, and the percentage that such students represent of the total enrolled;

(g) The number and percentage of students completing the program in which a student is enrolled or expresses interest, if such data are available at the institution; and

(h) The names of persons designated under § 178.5 and information regarding how and where such persons may be contacted.

(20 U.S.C. 1088b-1.)

#### § 178.5 Availability of employees for information dissemination purposes.

(a) Except as provided in paragraph (b) of this section, each institution which receives an administrative cost allowance under any of the programs for which such allowance is paid in any academic year shall designate, for that year, an employee or group of employees who shall be available on a full-time basis to assist students or prospective students in obtaining the information specified in § 178.4. If the institution designates one person, that person shall be available, upon reasonable notice, to any interested student or prospective student through the normal administrative working hours of that institution. If more than one person is designated, their combined schedules shall be arranged in such a manner that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) The Commissioner may waive the requirement that an employee or group of employees be available on a full-time basis for carrying out the requirements of this part at any institution when the total enrollment, or the portion of the enrollment participating in student financial aid programs authorized under Title IV of the Act (the Basic Educational Opportunity Grant Program, Supplemental Educational Opportunity Grant Program, College Work-Study Program, National Direct Student Loan Program, Guaranteed Student Loan Program, and State Student Incentive Grant Program), is too small to necessitate the availability of an employee or group of employees on a full-time basis. The Commissioner may waive the requirement of full-time availability for any institution that submits a timely application for the waiver if it: (i) Has a total enrollment of not more than 1,000 in the academic year for which the waiver is requested and has not more than 500 recipients of student financial aid from the programs authorized under Title IV of the Act; or (ii) Can substantiate that there is insufficient demand among its students or prospective students to necessitate the full-time availability of an employee or group of employees to carry out the requirements of this part.

(2) The granting of a waiver under subparagraph (1) of this paragraph does not exempt an institution from designating a specific employee or group of employees to carry out the provisions of this section.

(20 U.S.C. 1088b-1.)

#### § 178.6 Use of funds.

Any institution which receives an administrative cost allowance for any academic year shall first use such funds to carry out the provisions of this part. If any funds remain, the institution shall use those funds for such other costs of administering the student financial aid programs authorized under Title IV of the Act as it determines necessary.

(20 U.S.C. 1088b-1.)

#### § 178.7 Compliance procedures and records.

(a) *Retention of records.* Each institution which receives an administrative cost allowance for any academic year shall keep intact and accessible all records relating to the receipt and expenditure of Federal funds in accordance with Section 434(a), General Education Provisions Act 20 U.S.C. 1232c), including all accounting records and related original and supporting documents that substantiate costs.

(b) *Audit questions.* The records involved in any claim or expenditure which has been questioned by audit shall be further retained until resolution of any such audit questions; provided, however, that records need not be retained if they relate to a payment with respect to which actions by the United States to recover for diversion of Federal funds are barred by the statute of limitations in 28 U.S.C. 2415(b).

(c) *Audit and examination.* The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to the records specified in paragraph (a) of this section and to any other pertinent documents, papers, and records of the institution.

(20 U.S.C. 1088b-1, 1232c.)

#### § 178.8 Audits—non-Federal.

(a) All of an institution's transactions relating to its use of administrative cost allowances received shall be audited by the institution or at the institution's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports and whether such transactions are in compliance with applicable laws and regulations. Such audits shall be performed in accordance with the Department of Health, Education, and Welfare "Audit Guide" for student financial aid programs. If the institution participates in the Supplemental Educational Opportunity Grant, College Work-Study, or National Direct Student Loan Programs, then the audit required by this part shall be included as part of an audit performed for any of those programs. If the institution does not participate in any of the above three programs, then the audit required by this part shall be performed at least once every two years.

(b) Audit reports shall be submitted to the HEW Audit Agency at the regional office of the Department of Health, Education, and Welfare serving the region in which the institution is located for its review. The Audit Agency and the Commissioner shall also be given access to records or other documents as may be necessary to review the results of such audits.

(20 U.S.C. 1088b-1, 1232c.)

[FR Doc. 77-10129 Filed 4-7-77; 8:45 am]

#### [ 45 CFR Part 178a ]

### STATE ADMINISTERED PROGRAMS—INCENTIVE GRANTS FOR STATE STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAMS

#### Proposed Rulemaking

Under the authority contained in section 493C of Part F of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1088b-3), the Commissioner of Education is giving notice that he proposes to issue, with the approval of the Secretary of Health, Education, and Welfare, the following regulation governing the operation of Incentive Grants for State Student Financial Assistance Training Programs.

#### EXPLANATION OF NEED FOR REGULATIONS

Section 493C authorizes incentive grants to States, which must be matched with State funds, for the design and development of statewide training programs for financial aid administrators.

Funds are drawn from two sources: an authorization for an appropriation of \$280,000, to be divided equally among the States which submit approvable applications, and the lesser of .05 percent, or \$10,000, from each State's annual allotment under each of the Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs.

#### SUMMARY OF COMMENTS PREVIOUSLY RECEIVED

In the FEDERAL REGISTER, Vol. 41, No. 230, Monday, November 29, 1976, the Commissioner published a Notice of Intent to Issue Regulations implementing the provisions of the Education Amendments of 1976 (41 FR 52410). At page 52416, comments were invited concerning the State Financial Assistance Training Programs. Five public conferences were held at various locations between December 13-17, 1976, at which the Office of Education received comments on this and other provisions of the Education Amendments. Further written comments were received through December 30, 1976. A summary of the comments received and the Office of Education's responses are set forth below.

*Comment.* Several comments were received recommending that the State Student Financial Assistance Training Programs be extended to students as well as to financial aid administrators. One commenter suggested that the inclusion of students as recipients of the training would provide them with a needed knowledge of the mechanics of student financial aid programs. Another commenter recommended that at least those students employed part time by an institution's financial aid office should be permitted to receive training.

*Response.* The statute does not provide authority for including students, as students, in the training programs authorized by this part. However, a State may include part-time administration in its training programs, including students who are part-time financial aid administrators.

*Comment.* One comment urged that the application for funding include an explanation of the expected relationships among the planned training under this section, the Basic Grant training program, and the training program authorized under section 533 of the Higher Education Act, as amended. It was also recommended that the applications be submitted annually.

*Response.* The proposed regulations do contain provisions that training provided under this part shall be coordinated with other student financial aid training programs in the State, to the extent possible, and that each State agency must submit an application annually.

*Comment.* Another comment was received concerning the design and development of these training programs. It was suggested that comprehensive program manuals should first be developed to provide a sound basis for guidance and instruction for the management and

administration of all student aid programs.

*Response.* The Commissioner recognizes that the lack of comprehensive program manuals is a continuing problem in improving the administration of student financial aid programs and will attempt to develop such manuals, subject to budgetary and personnel constraints. However, he believes that the need for student financial aid training programs is sufficiently urgent that training should be initiated using the regulations and other materials currently available.

#### INSTRUCTIONS CONCERNING COMMENTS

Interested persons are invited to direct comments concerning these proposed regulations to:

Mr. John R. Proffit, Director, Division of Eligibility and Agency Evaluation, Room 3030, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. 20202  
Telephone: (202) 245-9873.

In order for comments to receive full consideration they should be received not later than 4:30 p.m. on May 10, 1977. The Commissioner will not acknowledge the comments individually, but they will be available for inspection in Room 4068, Regional Office Building 3, between 8:30 a.m. and 4 p.m., Monday through Friday.

Public hearings on these proposed regulations will be held at times, dates, and locations to be announced in a forthcoming issue of the FEDERAL REGISTER.

The Office of Education 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 No. 13.582, Student Financial Assistance Training Program.)

Dated: February 18, 1977.

WILLIAM F. PIERCE,  
Acting Commissioner  
of Education.

Approved: March 31, 1977.

JOSEPH A. CALIFANO, Jr.  
Secretary of Health, Education,  
and Welfare.

1. Chapter I of Title 45 of the Code of Federal Regulations is amended by adding a new Part 178a, which reads as follows:

Sec.	Purpose.
178a.1	Definitions.
178a.2	Allotments.
178a.3	Student Financial Assistance Training Program requirements.
178a.4	Training program components.
178a.5	State applications.
178a.6	Review of State applications.
178a.7	State matching requirements.
178a.8	Use of funds.
178a.9	Reporting requirements.
178a.10	

AUTHORITY: Sec. 493C of Title IV of the Higher Education Act of 1965, as amended by sec. 131(b) of Pub. L. 94-482, 90 Stat. 2149-2150 (20 U.S.C. 1088b-3), unless otherwise noted.

**§ 178a.1 Purpose.**

(a) The purpose of this part is to make incentive grants available to the States to be administered, in consultation with statewide financial aid administrator organizations, for the purpose of designing and developing programs to increase the proficiency of institutional and State financial aid administrators in all aspects of student financial aid.

(b) Assistance provided under this part is subject to the applicable provisions of Subchapter A of this chapter relating to fiscal, administrative and other matters (General Provisions for Office of Education Programs (45 CFR 100a)).

(20 U.S.C. 1088b-3.)

**§ 178a.2 Definitions.**

(a) "Act" means the Higher Education Act of 1965, as amended.

(b) "Institution of postsecondary education" means an institution of higher education, as defined in section 1201(a) of the Act, a proprietary institution of higher education, as defined in section 491(b) of the Act, an eligible institution, as defined in section 435 of the Act, or an area vocational school, as defined in section 8(2) of the Vocational Education Act of 1963.

(c) "State" means, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(20 U.S.C. 1141(b), 1088(a), and 1085.)

**§ 178a.3 Allotments.**

(a) Funds appropriated pursuant to section 493C(b) of the Act will be divided equally among States submitting approvable applications by the announced closing date.

(b) The Commissioner will transfer to each State which has been awarded a grant under this part amounts equal to .05 percent of the funds allotted to that State under each of the Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs, except that the amount transferred from each program may not exceed \$10,000. This amount will be added to the amount received by each State under paragraph (a) of this section.

(20 U.S.C. 1088b-3.)

**§ 178a.4 Student Financial Assistance Training Program requirements.**

(a) The State agencies which administer the State Student Incentive Grant Program authorized by Title IV, Part A, Subpart 3 of the Act will be responsible for the design and development of financial assistance training programs under this part, for the purpose of increasing the proficiency of institutional and State financial aid administrators in all aspects of student financial aid. If such agency does not exist in any State, an agency or organization designated by the State will be responsible for the

design and development of the program. The State agencies shall develop the programs in consultation with statewide financial aid administrator organizations.

(b) The training programs under this part shall:

(1) Identify the current and future need for financial aid administrators at State agencies and at institutions of post-secondary education throughout the State and the qualifications of such administrators;

(2) Assess the strengths and weaknesses of any current programs in the State which provide training in State and institutional financial aid policies and procedures;

(3) Develop programs to overcome the weaknesses identified in subparagraph (2) of this paragraph;

(4) Design and develop training materials and programs to improve the quality of financial aid administrators through inservice and preservice training, which shall include the components set forth in § 178a.5;

(5) Evaluate the effectiveness of the training materials and programs developed under this part; and

(6) Provide instruction in the administration of the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grant, College Work-Study, National Direct Student Loan, and Guaranteed Student Loan Programs.

(20 U.S.C. 1088b-3.)

**§ 178a.5 Training program components.**

Each training program developed under this part shall provide:

(a) A description of the principles upon which student financial aid is based;

(b) The theory, methodology, and forms of the principal systems of need analysis used for awarding student financial aid, such as the systems of the College Scholarship Service, the American College Testing Program, and the Basic Educational Opportunity Grant Program, and of the system used to determine eligibility for the receipt of a Guaranteed Student Loan;

(c) Familiarity with the statutes, regulations, handbooks, and any other applicable administrative materials pertaining to the student financial aid programs authorized under Title IV of the Act and to all student financial aid programs administered by that State;

(d) Strategies for packaging Federal, State, private, and institutional programs of student financial aid;

(e) Requirements for maintaining student records, State and institutional accounts, and disbursement systems;

(f) Student and institutional rights and responsibilities pertaining to financial aid programs;

(g) Management practices and procedures so as to eliminate institutional and student fraud and abuse in the operation of student financial aid programs; and

(h) Any other subjects determined by the State agency to be necessary to carry out the purposes of this part.

(20 U.S.C. 1088b-3.)

**§ 178a.6 State applications.**

(a) Any State desiring to obtain a grant under this part shall file an application with the Commissioner, through the State agency administering its State Student Incentive Grant Program, except that, if no such agency exists in the State, the application shall be filed through an agency or organization designated by the State for this purpose. The application shall include the name of the State agency administering the program, shall describe the activities to be undertaken, and shall contain sufficient information to enable the Commissioner to determine that the State program will meet the requirements set forth in §§ 178a.4 and 178a.5.

(b) As part of its application, each State shall provide assurances that the Federal funds received under this part for any academic year will be matched by an amount at least equal to the Federal funds reserved for that State under § 178a.3, or, if the State cannot make such an assurance, the amount of Federal funds that the State does plan to match for that academic year.

(c) The Commissioner will from time to time establish cut off dates for the filing of applications.

(20 U.S.C. 1088b-3.)

**§ 178a.7 Review of State applications.**

The Commissioner will review each State's application to insure that it meets the requirements §§ 178a.4, 178a.5, and 178a.6. The Commissioner will not disapprove any State's application without giving the State agency an opportunity to remedy the deficiencies in its application within a reasonable time period.

(20 U.S.C. 1088b-3.)

**§ 178a.8 State matching requirements.**

In satisfying its matching requirements, the State is subject to §§ 100a.90 through 100a.94 of the Office of Education General Provisions (45 CFR 100a.90-100a.94). Such matching must be from non-federal sources and may be cash or in kind. The State shall maintain supporting records to indicate the amount and sources of such matching.

(20 U.S.C. 1088b-3.)

**§ 178a.9 Use of funds.**

(a) Funds received by a State under this part must be used with matching State funds to pay the costs of designing and developing programs to increase the proficiency of institutional and State financial aid administrators.

(b) Funds received under this part may not be used solely for the operation of an existing program. However, if the State already has such a program developed or in operation, funds may be used to refine or evaluate that program or to demonstrate and disseminate effective materials and practices.

(20 U.S.C. 1088b-3.)

## PROPOSED RULES

## § 178a.10 Reporting requirements.

At the end of each academic year for which a State receives a grant under this part, the State shall provide a report containing such information as the Commissioner determines necessary to insure that the State is adequately performing its responsibilities under this part.

(20 U.S.C. 1088b-3.)

[FR Doc.77-10130 Filed 4-7-77;8:45 am]

# Federal Register

FRIDAY, APRIL 8, 1977

PART IV



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POSTAL SERVICE



MAIL SECURITY  
REGULATIONS

Proposed Rule

## POSTAL SERVICE

[ 39 CFR Part 111 ]

### CONTENTS OF CHAPTER I OF POSTAL SERVICE MANUAL

#### Mail Security Regulations

AGENCY: United States Postal Service.

ACTION: Proposed Rule.

**SUMMARY:** These proposed regulations would prescribe Postal Service policy as to when it is permissible to delay, detain, or open mail, and would establish procedures to be followed by postal employees in handling requests from Government agencies for the delay, detention, or opening of mail. The need for detailed regulations of this kind has been suggested by the recent disclosure of certain governmental mail interception and opening projects.

**DATES:** Written comments must be received on or before June 7, 1977.

**ADDRESSES:** Assistant General Counsel, Special Projects, U.S. Postal Service, 475 L'Enfant Plaza West, Washington, D.C. 20260.

**FOR FURTHER INFORMATION CONTACT:**

Charles R. Braun (202-245-4680).

**SUPPLEMENTARY INFORMATION:** Under the provisions of 39 CFR § 111.3 the Postal Service is proposing to meet the above-described need for detailed regulations by revising 115 of the Postal Service Manual, chapter I of which has been incorporated by reference in the FEDERAL REGISTER, see 39 CFR § 111.1. The proposal would: (a) Set forth a general presumption that mail shall not be detained, delayed, or opened; (b) Inform postal employees of the penalties for participating in unlawful activities detrimental to mail security; and (c) Inform postal employees, other Government agencies, the public, and Congress what kinds of Governmental actions concerning mail the Postal Service considers unlawful, and under what circumstances the Postal Service considers itself to be authorized to cooperate with other Government agencies regarding access to mail.

#### LEGAL BASIS OF MAIL SANCTITY

The principle that mail should be generally free from governmental surveillance is based on the rights of the American people to be free from unreasonable or unauthorized governmental actions, as protected by the United States Constitution, Federal laws, and judicial decisions. Federal criminal laws whose origins antedate the Constitution generally prohibit opening, detention, obstruction, or delay of mail, and provide for fine and imprisonment of offenders. 18 U.S.C. 1701-1703, 1708-1709 (1979); see 23 J.C.C. 671 (1782). The civil postal laws buttress mail sanctity by establishing the Postal Service's general duty to provide for adequate and efficient transmission of all mail, 39 U.S.C. 403 (a), (b) (1) (1970); to give the highest priority to the most expeditious transmission of important

letter mail, 39 U.S.C. 101(e) (1970); and to maintain one or more classes of mail service for the transmission of letters sealed against inspection, 39 U.S.C. 3623 (d) (1970) (1st sentence).

The pre-Constitutional 1782 ordinance of the Continental Congress generally prohibiting mail opening, detention, and delay (still in effect as 18 U.S.C. 1702) was modeled after English postal legislation whose stated purpose was to prevent: " \* \* \* abuses [which] may be committed by wilfully opening, imbezzling [sic], detaining and delaying of letters or packets, to the great discouragement of trade, commerce, and correspondence. \* \* \* Act of 9 Anne, c. 10, sec. 40 (1710).

Mail security and privacy have roots in the First and Fourth Amendments to the Constitution. The leading Supreme Court cases (which focus on the Fourth Amendment's protection of the mails) are *Ex parte Jackson*, 96 U.S. 727, 732-733 (1877); and *United States v. Van Leeuwen*, 397 U.S. 249 (1970). The leading First Amendment precedents are legislative precedents: the Senate report and debates leading to the defeat, on Constitutional grounds, of President Jackson's proposal to prohibit the transmission by mail of anti-slavery publications into the slave states, S. Rep. No. 118, on S. bill No. 122, 24th Cong., 1st Sess. 1-4 (1836); Congressional Globe, 24th Cong., 1st Sess. 36-37, 164-165, 195, 282, 284, 291-292, 325, 331-332, 347-348, 412, 524, 539, Appendix 8-9, 453-458 (1836); *Ex parte Jackson*, *supra* at 733-735; and the debates leading to the defeat of proposals that the sealed mails be opened without a search warrant to search for Espionage Act violations, 55 Cong. Rec. 1821-1823, 1867, 1869-1872, 2057-2060, 2062-2072 (1917).

Section 115.1 of the proposed regulations would promulgate a general presumption in favor of the sanctity of the mail, giving postal employees a clear legal basis not to cooperate with other Government agencies seeking access to mail, without a clear legal basis for such cooperation.

#### SEALED AND UNSEALED MAILS

From the first postal statutes enacted after the Constitution, mail service has consisted not only of one or more classes of "sealed" letter mail service, but also one or more classes of mail service for certain defined categories of matter (such as newspapers and magazines) eligible for transmission at considerably less than the letter mail rate. In order to insure readily that letters or other ineligible materials have not been unlawfully inserted into the non-letter mails for transmission at non-letter rates, and thus often to protect the people from being taxed to pay for unauthorized subsidies of mailings, the unsealed mails have been considered to be subject to postal inspection to determine whether they contain only matter eligible for the non-letter rate claimed by the sender. Such inspections may necessarily entail delay of mail. Postal inspections of the contents of such unsealed mail may also

necessarily lead to administrative determinations as to whether the contents are mailable. Since sealed mails are generally to receive priority of handling over unsealed mails, the unsealed mails may be subject to mail handling delays while the sealed mails are processed with priority.

Judicial recognition of the distinction between sealed and unsealed mails is contained in *Ex parte Jackson*, *supra* at 732-733. Statutory recognition of this distinction is found in 39 U.S.C. 101(e) and 3623(d) (1st sentence). Proposed section 115.23 would define which mails, among the present classes of mail services, are sealed and which are unsealed.

#### EXCEPTIONS

Mail sanctity is not, and never has been, absolute. Present part 115, which states, "First-class mail is given absolute secrecy while in our custody \* \* \*", would therefore be deleted from postal regulations by the proposal.

(a) *Dead mail.* The present statutory authority of the Postal Service to open "dead letters" and other "dead" or undeliverable mail is 39 U.S.C. 404(1) and 3623(d). There has been express statutory authority of this kind at least since 1777. Act of October 16, 1777, 23 J.C.C. 122. Similar authority was granted in English postal statutes applicable in North America before the Revolution. Act of 9 Anne, c. 10, sec. 40 (1710). Although during most of the Revolutionary War there was authority to use information found in dead letters having war intelligence value, such authority was withdrawn before the war ended, Act of October 18, 1782, 23 J.C.C. 675, 678, and the policy since then has generally been that undeliverable letter mail may be opened "for the sole purpose of determining an address at which the letter can be delivered," 39 U.S.C. 3623(d). Mail matter in dead letters otherwise remains "constructively under seal \* \* \* 3 Op. Solic. P.O. Dep't. No. 1134 at 191 (1898). The proposed regulations would continue the dead mail exception unchanged. See proposed sections 115.21(a), 115.5(a).

(b) *Consent of addressee or sender.* Opening, detention, and delay of mail by the Postal Service are lawful, with the consent of the sender or the addressee. The general principle is that the post office takes custody but not ownership of mailed articles, and the sender and addressee as postal customers retain certain rights as to the mail. Under current postal regulations, the sender has the right to ask for efforts to recall mail before it is delivered to the addressee, if he will reimburse the postal system for its costs, PSM 153.5; and there is express statutory authority for the Postal Service to open sealed mail without a warrant with the addressee's consent, 39 U.S.C. 3623(d) (last sentence). One modern use of the addressee's consent exception is the opening of sealed mail suspected of containing a letter bomb intended to harm or injure the addressee. Exceptions of this kind have been in the postal laws and regulations of the United States since 1782, and before that, in English law, Act of Octo-

ber 18, 1782, 23 J.C.C. 671 (consent of sender or addressee); Act of 9 Anne, c. 10, sec. 40 (1710) (consent of addressee). The proposed regulations would continue pre-existing law in this regard (proposed sections 115.21(b) and 115.31(c)).

(c) *Search warrants.* English postal legislation prior to the Revolutionary War authorized executive search warrants for opening, detention, or delay of specific pieces of mail, "by an express warrant in writing under the hand of one of the principal secretaries of state for every such opening, detaining, or delaying." \* \* \* Act of 9 Anne, c. 10, sec. 40 (1710). Legislation enacted during the Revolutionary War by the Continental Congress similarly made it permissible to intercept and open letters "by an express warrant under the hand of the President of the Congress of these United States, or in time of war, of the Commander in Chief of the armies of these United States, or of the commanding officer of a separate army in these United States, or of the chief executive officer of one of the said states." \* \* \* Act of October 18, 1782, 23 J.C.C. 671. The authority of the military commanders and of the State executives—limited to wartime—expired a few weeks later, upon the conclusion of an armistice with Great Britain. Provisional Articles of November 30, 1782, 8 Stat. 54. Thereafter, it was decided not to authorize the States to intercept or open letters in peacetime, 34 J.C.C. 232, 239 (1788).

When the Constitution went into effect the next year, and the office of President of Congress was discontinued, all authority to stop or open letters in war or peacetime under a warrant lapsed. Although the Supreme Court in the 1877 *Jackson* case, 96 U.S. at 732-733, had stated that sealed mail opening under the authority of a warrant would be constitutional, the statutory prohibition against mail opening, detaining, or delay was continued without provision of any statutory search warrant authority to stop or open mail from the adoption of the Constitution in 1789 to the First World War. E.g., Act of September 22, 1789, ch. 16, sec. 1, 1 Stat. 70; Act of February 20, 1792, ch. 7, sec. 16, 1 Stat. 236; Rev. Stat. 3892 (1873); Act of March 4, 1909, ch. 321, sec. 194, 35 Stat. 1125.

Federal search warrant authority under the Constitution was first enacted in 1917, along with legislation specifying that no one could open any letter not addressed to himself, without such a search warrant, except an employee of a dead letter office. Such warrants can only be issued by a judge or independent magistrate. Espionage Act of 1917, Title XI, 40 Stat. 228, now Fed. R. Crim. P. 41; Espionage Act of 1917, Title XII, sec. 1 (proviso), 40 Stat. 230, now 39 U.S.C. 3623(d). The legislative debates on the espionage bill indicate that the authority for opening sealed letter mail under a "search warrant authorized by law" now contained in 39 U.S.C. 3623(d) extends only to the bill's Federal search warrant authority, not to search warrants issued solely under the authority

of state law. Espionage Act debates, supra, in particular 55 Cong. Rec. 2070 (1917).

The proposed rules would continue the search warrant exception in its present form (proposed sections 115.21(c), 115.22(a), 115.5(c)). They would also prescribe detailed instructions for postal employees to follow in executing a search warrant that complement the search warrant rules of the Federal Rules of Criminal Procedure (proposed section 115.6).

In 1971 the Supreme Court in the *Van Leeuwen* case expressly upheld the constitutionality of a detention of suspected mail for a reasonable time in order to apply for, obtain, and execute a search warrant. The proposed regulations would follow the Court's holding (sections 115.31(a), (e)).

For about a quarter of a century, certain subordinate military components of the Department of Defense have held the view that a search authorization issued by a military commander should be regarded as the military equivalent of a civilian search warrant and should therefore be sufficient to authorize the opening and seizure of mail in military postal custody, at least when the mail comes into the possession of a unit mail clerk. The former Post Office Department in 1953, and the United States Postal Service in 1972 and 1975, have advised, however, that military commanders do not have such authority, and that the general sanctity of mail in military postal custody should be observed until it is delivered to the addressee. The Department of Defense is obligated generally to operate the military postal system in accordance with postal laws, regulations, and policies. 39 U.S.C. 401(2), 406 (1970); H. R. Rep. No. 91-1104, 91st Cong., 2d Sess. 33 (1970); 39 U.S.C. 712(d) (1964); Postal Agreement with Department of Defense, USPS Publication 38, General Policy Statement 3, page 3 (1972). The proposed regulations would prescribe that mail in military postal custody (including the custody of a unit mail clerk) may not be opened by the authority of military commanders (proposed section 115.93).

The proposed regulations would prescribe that a search warrant for mail issued under State authority (as distinguished from a search warrant issued by a State judge or magistrate under Rule 41 of the Federal Rules of Criminal Procedure) should not be executed (proposed section 115.61). Present postal regulations do not address this question, and the recent practices of the Post Office Department and the Postal Service have been inconsistent. Usually, if a State warrant for mail opening is presented, execution of the State warrant will be refused, based on the sovereign immunity of the Federal postal system; but cooperation may be afforded to State officers in securing a Federal warrant. However, in exceptional cases (typically involving a State murder investigation as to which there was no concurrent Federal jurisdiction, and there-

fore no legal basis for a Federal warrant), postal officials have cooperated with the execution of State warrants for mail. This practice has been ended, based upon a lack of legal authority for it.

(d) *Mail bombs.* There is no express statutory authority to open sealed mail suspected of containing a bomb to deactivate the bomb. Typically, therefore, legal access to sealed mail suspected of containing a bomb is obtained by the consent of the addressee or a search warrant. Where time or circumstances do not appear to permit either to be obtained, and the suspect letter or parcel reasonably appears to pose an immediate danger to persons or property, the practice is to arrange for explosive experts to open the letter and parcel and (if necessary) to deactivate or process the bomb or other dangerous contents. The legal basis for such actions is the emergency or exigency exception from the normal Constitutional search warrant requirement, e.g., *United States v. Barone*, 330 F. 2d 543 (2d Cir. 1964), and the availability in such circumstances of the justification of self-defense to a prosecution under either 18 U.S.C. 1701, 1702, or 1703. Clark and Marshall, *Crimes*, § 515 at 322-325 (6th ed. 1958); Miller, *Criminal Law*, §§ 54-55 at 164-170 (1934). Exigency mail treatment would be authorized by section 115.4, which would prescribe stringent reporting controls to insure that there is no abuse of this authority.

(e) *Customs and agriculture examination of incoming foreign mails.* Although there is no express statutory authority for examination of incoming foreign mails by either the Customs Service or the Agriculture Department, the Postal Service has always considered it appropriate to make cooperative arrangements with the Customs Service (and with the Agriculture Department) to insure that the incoming foreign mails are not misused to evade the customs or plant quarantine laws, or other laws regulating or prohibiting imports. Postal regulations of this kind have been in effect since 1871. Present arrangements would be continued by proposed sections 115.91 and 115.92(a). Present cooperative arrangements with the Department of Agriculture for enforcing the Federal plant quarantines of Hawaii and Puerto Rico would be continued by proposed section 115.92(b). The exception, in proposed section 115.91, of sealed mail addressed to the District of Columbia from warrantless Customs opening, reflects a decision by the Court of Appeals for the District of Columbia that requires, on Constitutional grounds, a search warrant for Customs' opening of incoming foreign letter mail. That decision, because of its conflict with the decisions of other Courts of Appeal, is now under review by the Supreme Court.

(f) *Territorial cooperation.* Proposed sections 115.94 and 115.96 would continue pre-existing cooperative arrangements with the Government of Guam and the Commonwealth of Puerto Rico. Section 3 of the Puerto Rico Federal

Relations Act, 48 U.S.C. 741a (1970); 9 Op. Sollic. P.O. Dep't. No. 200 at 249 (1948) (Guam).

#### SANCTITY OF INTERNATIONAL TRANSIT MAIL

Under the Acts of the Universal Postal Union, to which the United States is a party, international mail is required to be given "freedom of transit"—to be transported, promptly and generally without interference, by the transit or intermediary postal administration to the next postal administration. UPU Const. art. I, sec. 1; UPU Conv. arts. 1-3, art. 33, sec. 6; T.I.A.S. No. 8231, pp. 35-36, 49, 442 (1976). Domestic criminal law provides that unlawful interference with transit mail is punishable to the same extent as similar interferences with domestic mails, 18 U.S.C. 1692, 1701-1703, 1708-1709 (1970). Proposed section 115.8 would prescribe regulations consistent with the postal treaty rules on handling and forwarding transit mail.

Proposed section 115.95 would prescribe the same rules for the Canal Zone Postal Service to follow. The statutory authority for proposed section 115.95 is 39 U.S.C. 401(2), 407 (1970); 2 C.Z.C. 1131 (a), 76A Stat. 38.

#### DISCLOSURE OF INFORMATION ABOUT MAIL SENT OR RECEIVED

Proposed section 115.5 would generally prohibit postal employees from disclosing information about mail sent or received which they may obtain through their official duties. Existing exceptions (such as for mail covers issued in accordance with postal regulations) would be continued.

#### RESPONSIBILITY FOR ENFORCEMENT

General responsibility for enforcement of these regulations would be vested in the Postal Inspection Service. Proposed section 115.7 would channel all requests by government agencies for access to mail or information about any person's mail through the Postal Inspection Service.

#### WARTIME MAIL CENSORSHIP

Although an emergency preparedness executive order now in effect assigns wartime main censorship responsibilities to the Postal Service and other Federal agencies, Exec. Order No. 11,490, as amended, secs. 401(22), 601(2)(a), 41 Fed. Reg. 24,305, 24,308 (1976), the proposed regulations make no provision for wartime mail censorship. In World Wars I and II, statutory authority for wartime mail censorship was delegated to the President. Trading with the Enemy Act of 1917, sec. 3(d), 40 Stat. 411, 50 U.S.C. App. 3(d) (1970); First War Powers Act, 1941, sec. 303, 55 Stat. 840-841; see, 9 Op. Sollic. P.O. Dept. No. 195 at 244 (1941); id. No. 201 at 252 (1942). However, the World War II authority has been repealed, Act of July 5, 1947, ch. 327, sec. 1, 61 Stat. 449, 50 U.S.C. App. 618 note (1970); and the World War I authority, although not explicitly repealed, is limited by its own terms to the

duration of the then "present war", 50 U.S.C. App. 3(d) (1970). Since there is no present statutory authority for wartime mail censorship, the Postal Service construes the executive order as intended merely to distribute within the executive branch any wartime censorship authority that may hereafter be delegated to the President by law.

#### MAIL SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

The proposed regulations make no provision for, and therefore would prohibit, interception or opening of mail without a warrant by U.S. foreign intelligence agencies such as the C.I.A. There is no statutory authority for such mail interception or opening programs. Although the claim has been made that the President may, based upon his Constitutional "foreign affairs powers", authorize mail openings for "foreign intelligence purposes," the present executive order on foreign intelligence gathering directs U.S. foreign intelligence agencies not to engage in: "Opening of mail or examination of envelopes of mail in United States postal channels except in accordance with applicable statutes and regulations." Exec. Order No. 11,905, February 18, 1976, sec. 5(b)(4), 41 Fed. Reg. 7,729 (1976). The Justice Department has stated that the promulgation of this executive order "withdrew any prior authorization for CIA mail opening programs. \* \* \* Justice Department Report on Its Decision Not to Prosecute Individuals Who Participated in CIA Mail Opening Projects 50 (January 14, 1977). Since the only explicit Constitutional "foreign affairs" power of the President not explicitly subject to Senatorial consent is the power to receive Ambassadors (Art. II, sec. 3), it would be necessary to enact a statutory authorization to provide a clear legal basis for U.S. foreign intelligence agencies to intercept or open mail for any purpose (other than under a judicially-issued search warrant).

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking, 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revision of the Postal Service Manual:

Part 115 of the Postal Service Manual is revised to read as follows:

#### PART 115—MAIL SECURITY

##### 115.1 Importance of mail security.

The Postal Service must preserve and protect the security of all mail in its custody from unauthorized opening, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts. Any postal employee committing or allowing any of these unauthorized acts is subject to administrative discipline, or criminal prosecution leading to fine, imprisonment, or both. An employee having a question about proper mail security procedures,

which is not clearly and specifically answered by postal regulations or by written direction of the Inspection Service or Law Department, shall resolve the question by protecting the mail in all respects and moving it, or letting it move, without interruption to its destination.

##### 115.2 Opening, reading, and searching of sealed mail generally prohibited.

.21 In general, no person may open, read, or search the contents of mail sealed against inspection, even though such mail may be believed to contain criminal or otherwise non-mailable matter or evidence of the commission of a crime. The only exceptions to this general rule are: (a) a postal employee in a dead mail office acting in accordance with dead mail regulations, part 159; (b) a postal employee acting with the consent of the addressee or sender; (c) a person executing a search warrant in accordance with section 115.6; (d) a person handling potentially dangerous mail in accordance with section 115.4; or, (e) an authorized Customs or Agriculture employee, acting in accordance with sections 115.91 or 115.92.

##### .22 Mail not sealed against inspection.

Mail not sealed against inspection may be opened, surrendered, its contents inspected and read, or information concerning it released, by an authorized postal employee, only: (a) under a search warrant in accordance with section 115.6; (b) without such a warrant in order to determine the mailability of the contents or whether the correct postage has been paid; or, (c) as otherwise expressly permitted by postal regulations.

##### .23 Definitions.

##### .231 Mail sealed against inspection.

For purposes of this part, the terms, "mail sealed against inspection," or "sealed mail," mean mail on which appropriate postage is paid, which under postal laws and regulations shall receive the most expeditious handling, transportation, and delivery, and which is not subject to postal inspection. The terms do not include international transit mail (section 115.8). They include first class mail, air mail, priority mail, international letter mail ("LC Postal Union mail" as defined in USPS Publication 42, International Mail), Mailgram, Express Mail, and Electronic Ticket Mail.

##### .232 Mail not sealed against inspection.

For purposes of this part, the terms, "mail not sealed against inspection," or "unsealed mail," mean mail on which appropriate postage for sealed mail has not been paid, which under postal laws or regulations is not required to receive the most expeditious handling, transportation, or delivery, and which is subject to postal inspection. The terms do not include international transit mail (section 115.8). They include second, third, and fourth class mail, international parcel post mail, and "AO Postal Union mail" (as defined in USPS Publication 42, International Mail).



## 115.3 Permissible detention of mail.

.31 Sealed mail generally not detained.

No postal employee may detain mail sealed against inspection (other than dead mail) except: (a) a postal inspector acting diligently and without avoidable delay upon reasonable suspicion, for a brief period of time, to assemble evidence sufficient to satisfy the probable cause requirement for a search warrant in accordance with section 115.6, and to apply for, obtain, and execute the warrant; (b) a postal employee acting in strict accordance with postal regulations (for example, sections 115.4 or 154.145); (c) a postal employee acting under postal regulations with the express consent of the addressee or sender (for example, section 153.5 or 154.19); (d) a postal employee acting under an order issued under 39 U.S.C. 3005, relating to false representations, lotteries, and unlawful matter; (e) a postal employee acting under section 115.62; (f) a postal employee conducting a mail count by direction of his postmaster or a postal inspector; (g) a postal employee acting under an order of a Federal court; or, (h) a postal employee during the period required to seek and obtain instructions under section 154.7 concerning mail whose delivery is in dispute, or under section 331.1 concerning legal process other than a search warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure, purporting to require the surrender of mail matter.

## .32 Unsealed mail.

Mail not sealed against inspection may be delayed or detained for the reasons stated in section 115.31 and as otherwise expressly permitted by postal regulations.

## 115.4 Mail reasonably suspected of being dangerous to persons or property.

Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb, or an immediate and substantial danger to property, may, without a search warrant, be detained, opened, removed from postal custody, and processed or treated, but only to the extent necessary to determine and eliminate the danger, and only if a complete written and sworn statement of the detention, opening, removal, or treatment, and the circumstances that prompted it signed by the person purporting to act under this subsection, is promptly forwarded to the Chief Inspector. Any person purporting to act under this subsection who does not report his action in accordance with the requirements of this subsection to the Chief Inspector, or whose action is determined after investigation not to have been authorized, is subject to disciplinary action or criminal prosecution.

## 115.5 Disclosure of information about mail sent or received by particular senders or addressees.

Except as provided in paragraphs (a)-(f), no employee shall disclose information on the outside cover of any piece of mail; information obtained from any inspection of the contents of

mail; or any other information which concerns any mail sent or received by any particular sender, addressee, or group of senders or addressees, which the employee obtains or controls in the performance of his official postal duties. An employee may disclose such information: (a) to the Postal Inspection Service for its official use, including appropriate reference to law enforcement authorities, when there is a reasonable basis to suspect that such information is evidence of the commission of a crime under State or Federal law, except that information obtained by opening sealed mail in a dead letter office may be used only to determine an address at which the mail can be delivered; (b) under section 233.2, regarding mail covers; (c) under a search warrant in accordance with section 115.6; (d) under an order of a Federal court; (e) at the request of the sender or addressee or the authorized agent of either; or, (f) otherwise in accordance with postal regulations: *Provided*, That any such information obtained from an inspection of the contents of mail may only be disclosed if the inspection accords with the regulations contained in this Part.

## 115.6 Execution of search warrants.

.61 Warrant issued by Federal Court or served by Federal officer.

A search warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure shall be executed as provided in section 115.62. Usually, a warrant issued by a Federal court or served by a Federal officer is issued under Rule 41, and is "duly issued" if signed and dated within the past ten days. No employee shall permit the execution of a search warrant issued by a State court and served by a State officer. If in doubt, an employee should temporarily detain the mail in question and promptly call a postal inspector for guidance.

## .62 Search warrant execution procedures.

A postal inspector may execute a search warrant. A person other than a postal inspector executing a search warrant must be accompanied by a postal employee authorized by the head of the postal installation at which the warrant is to be executed. Mail may be taken from postal custody under the authority of a search warrant only if the person executing the warrant leaves a copy of the warrant and a receipt or inventory, made out in the presence of the postal employee accompanying him, which particularly describes each piece of mail taken, including all service endorsements on the cover (such as, "Return Receipt Requested") and any official postal identity numbers (such as registry, insurance, or certified mail numbers). The receipt or inventory may be attached to the copy of the warrant, or written on the reverse side of the copy of the warrant. The installation head or his designee shall make a copy of the receipt or inventory and of the copy of the warrant and send it to the Inspector-in-Charge of the Division in which the installation is located.

## .63 Notice to sender or addressee.

If the cover of the mail has been endorsed and stamped to show that the sender has requested and paid for a return receipt or notice of nondelivery, the sender shall be notified of seizure of the mail under the warrant by an endorsement to that effect on the return receipt or notice, or on a duplicate if the original receipt or notice is taken. The receipt or notice shall be dispatched as soon as possible, unless the officer executing the warrant presents a Federal court order to delay the dispatch. In that event the dispatch shall be delayed in accordance with the order.

## 115.7 Cooperation with Federal and State and local agencies for access to mail.

A postal employee receiving a request from a Federal, State, or local law enforcement, intelligence, or other government agency, for access to, or information about, particular mail matter of any class in the custody of the Postal Service shall refer the request to the Postal Inspection Service with the explanation that the Inspection Service is responsible for liaison with all government agencies with respect to a request of this kind. No employee of the Inspection Service shall comply with such a request, except as authorized by postal regulations.

## 115.8 International transit mail.

## .81 Definitions.

## .811 International transit mail.

As used in this part, the term "international transit mail" applies to mail of foreign origin which is passed by a foreign postal administration to the United States Postal Service for forwarding to a foreign postal administration under a postal treaty or convention. It includes closed mails and à découvert letter post items.

## .812 Closed mail.

The term "closed mail" refers to any bag, container, or mail passed to the United States Postal Service by a foreign postal administration, the entire contents of which are required by applicable postal treaties or conventions to be passed to a foreign postal administration.

## .813 À Découvert letter post item.

The term "à découvert letter post item" refers to any international letter post item ("Postal Union mail" as defined by USPS Publication 42, International Mail) which is addressed for delivery by a foreign postal administration, and is passed to the United States Postal Service by a foreign postal administration in a bag, container, or mail that must be opened by the United States Postal Service in accordance with applicable postal treaties or conventions because it contains items addressed for delivery by the United States Postal Service.

## .82 Special security rules.

International transit mail is entitled to freedom of transit. It shall not be opened, seized, or searched. It is not subject to Customs or Agriculture inspection under sections 115.91 or 115.92. In ac-

cordance with the Universal Postal Convention, any international transit mail consisting of closed mails, à découvert letter-post items, and air mail correspondence, shall not be detained, but shall instead be forwarded to the next foreign postal administration by the quickest routes which the United States Postal Service uses for mail sealed against inspection.

115.9 Mail security, law enforcement, and other government agencies.

.91 Customs Service.

Without a search warrant but upon reasonable suspicion, designated personnel of the U.S. Customs Service may open or inspect the contents of mail (but not read correspondence in sealed mail) in the customs inspection of mail (including APO-FPO mail) which has originated outside the Customs Territory of the United States ("CTUS"), and is addressed for delivery inside the CTUS (except sealed mail addressed to the District of Columbia). Such inspections may be conducted only in accordance with part 820, USPS Publication 42, International Mail, relating to cooperation with the U.S. Customs Service on inspections of imports. No Customs personnel may read, allow any other person to read, or transfer to any other person any correspondence contained in sealed mail unless such action is authorized by a search warrant issued under Rule 41 of the Federal Rules of Criminal Procedure. No Customs personnel may, without a search warrant, open, inspect, read, or seize any mail in postal custody (including APO-FPO mail) which has not originated outside the CTUS, or which has diplomatic or consular immunity from customs inspection (USPS Publication 42, International Mail, sections 821.1a and 821.1b).

.92 Department of Agriculture.

(a) *Foreign origin mail.* Without a search warrant, designated personnel of the U.S. Department of Agriculture may open and inspect (but not read) the contents of mail (including APO-FPO mail) which has originated outside the Customs Territory of the United States ("CTUS") and is addressed for delivery inside the CTUS. Such inspection may be conducted only in accordance with part 830, USPS Publication 42, International Mail, relating to cooperation with the Department of Agriculture on plant quarantine inspections of imports.

(b) *Domestic mail from Hawaii or Puerto Rico.* Without a search warrant, designated USDA personnel may open and inspect (but not read) the contents of mail reasonably suspected of containing plant matter or plant pests, which has been mailed in Hawaii or Puerto Rico and is addressed to the United States mainland, either with the consent of the sender, or if the mail is unsealed. Such inspections may take place only in designated areas of the Hawaii or Puerto Rico post office, and only so long as the Federal plant quarantine of Hawaii or Puerto Rico remains in effect.

(c) *State terminal inspections.* Postal employees may cooperate with the Department of Agriculture and with State

terminal inspection officials in accordance with the Terminal Inspection Act, 7 U.S.C. 166, or implementing regulations in USPS Publication 14, Plant Quarantines.

.93 Military postal system.

This part applies to the military postal system and to all military personnel performing postal duties, including unit mail clerks. A search authorization issued by or under the authority of a commanding officer or a military judge is not a "search warrant" within the meaning of this part. Offenses committed against the security of mail in the custody of the military postal system, at home or abroad, are punishable under Federal criminal laws relating to postal offenses in Title 18, United States Code, as well as under the Uniform Code of Military Justice. Mail in the custody of the military postal system, if mailed outside the Customs Territory of the United States for delivery to an address within the Customs Territory of the United States, may be opened and searched (but correspondence in sealed mail may not be read) without a search warrant, by authorized personnel of the U.S. Customs Service in accordance with section 115.91, relating to customs inspection, and by authorized personnel of the Department of Agriculture in accordance with section 115.92(a), relating to plant quarantines of imports, even though for other purposes such mail is domestic mail, part 112.

.94 Customs inspection in Guam.

Postal employees in the Agana post office may permit designated customs officials of the Government of Guam, without a search warrant to open, inspect, and read the contents of unsealed mail, and to examine the exterior (but not open or read the contents) of sealed mail which is addressed for delivery within the Territory of Guam. Upon the request of Guam customs officials, postal employees in the Agana post office may ask the addressee of sealed mail which Guam customs reasonably suspects of containing dutiable or prohibited matter to authorize Guam customs to open and inspect the contents of the sealed mail, or to appear at the post office to accept delivery of the sealed mail in the presence of a Guam customs official.

.95 Canal Zone Postal Service.

.951 International transit mail.

The Canal Zone Postal Service shall comply with section 115.8 with regard to any international transit mail passed to it by a foreign postal administration.

.952 Mail addressed to the United States or any area for which it is responsible.

The Canal Zone Postal Service shall comply with part 115 with regard to any mail passed to it by a foreign postal administration which is addressed for delivery in the United States or any area for which the United States is responsible (other than the Canal Zone).

.953 Mail passed to the Canal Zone Postal Service by the United States Postal Service not addressed for delivery in the Canal Zone.

The Canal Zone Postal Service shall comply with part 115 with regard to any

mail passed to it by the United States Postal Service which is not addressed for delivery in the Canal Zone.

.954 Definitions.

For purposes of subsections 115.952 and 115.953, the words "postal employee" or words of like import in part 115 refer to an employee of the Canal Zone Postal Service; and the words "Postal Service" or "United States Postal Service" or words of like import refer to the Canal Zone Postal Service.

.96 Puerto Rico.

Under 48 U.S.C. 741a, postal employees in the San Juan Post Office are authorized to permit excise tax collection officials of the Commonwealth of Puerto Rico to record the names and addresses that appear on the exterior of incoming insured, certified, or C.O.D. mail, so long as no mail is opened or detained.

Conforming Amendments of Parts 112, 137, 331.

Amend part 112 by inserting between the words "Army-Air Force (APO) and Navy (FPO) post offices" and the semicolon immediately following them, the words, "(except as provided in part 115)".

Amend section 137.81 by inserting, between the word "detained" and the word "even" in the first sentence, the words, "except in accordance with part 115."

Amend part 331 to read:

.11 Requests for surrender of mail.

Any employee served with legal process, other than a search warrant issued under Rule 41 of the Federal Rules of Criminal Procedure (see section 115.6), purporting to require the surrender of mail, shall respectfully refuse to surrender it and shall refer the matter to the Regional Counsel for further information.

See 115.31 for permissible detention of the mail.

.12 Access to Mail and Mail Handling Areas.

Access to mail and mail handling areas in postal installations is restricted to authorized postal employees and mail contractors on official business, and to other persons specifically permitted access by the installation head or superior authority for the proper conduct of the official business of the Postal Service, the General Accounting Office, or a Congressional committee. Such other persons must be accompanied by a postal employee on duty, Federal, State, or local law enforcement or public safety authorities may be given access to mail and to mail handling areas to remove potentially dangerous mail matter in accordance with section 115.4. In appropriate circumstances, the installation head may allow Federal, State, or local law enforcement authorities access to mail and mail handling areas, to deal with conditions dangerous to life, limb, or property, such as fires or flooding, or to make lawful arrests.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the proposal is adopted.

(39 USC 401, 404, 3623(d).)

ROGER P. CRAIG,  
Deputy General Counsel.

[FR Doc. 77-10404 Filed 4-7-77; 8:45 am]

# **federal register**

**FRIDAY, APRIL 8, 1977**

**PART V**



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## **OFFICE OF THE FEDERAL REGISTER**



**PRIVACY ACT OF 1974**

**Publications Guidelines**

## OFFICE OF THE FEDERAL REGISTER

### PRIVACY ACT ISSUANCES

#### Publication Guidelines

**ACTION:** Notice of plans for publication of 2nd Annual Compilation of Privacy Act issuances.

**SUMMARY:** This document announces schedules and procedures developed to help agencies meet their publication responsibilities under the Privacy Act of 1974. This document also establishes a requirement that agencies submit a Table of Contents for the systems of records described.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Robert Jordan, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. Telephone: 202-523-5240.

#### INTRODUCTION

The Privacy Act (Public Law 93-579, section 552(e)(4)) requires that all agencies shall publish " \* \* \* in the FEDERAL REGISTER at least annually a notice of the existence and character of systems of records \* \* \*". The Act also requires that the FEDERAL REGISTER " \* \* \* shall annually compile and publish the rules promulgated under subsection (f) and agency notices published under subsection (e)(4) in a form available to the public at low cost." (Section 552(f).)

The Office of the Federal Register (OFR) has developed these procedures to help agencies to meet their responsibilities under the Act and to minimize the printing costs involved in reissuing and reprinting all the Privacy Act notices.

#### BACKGROUND

The OFR scheduled the first Annual Compilation of Privacy Act Issuances for publication in 1976. The Compilation was contained in five volumes. In order to avoid the delays that occurred in print-

ing the 1976 Compilation, OFR has established a new schedule that should result in issuance of the 1977 Compilation by September 27, 1977, the second anniversary of the effective date of the Act. To accomplish this goal, and to insure that the most up-to-date versions of their systems appears in the Privacy Act Compilation, Federal agencies will have to adhere strictly to the deadline dates announced in these guidelines. Failure to comply with these dates may mean that an outdated version of an agency's issuances will appear in the 1977 systems Compilation, or that an agency may be omitted altogether from the Compilation.

#### SUBMISSION DEADLINES

During the period July 1, 1977 to August 31, 1977, each Federal agency subject to the Privacy Act must submit a document for publication in the FEDERAL REGISTER. This document is required under the provisions of 5 U.S.C. 552a(e)(4).

#### MANNER OF SUBMISSION

The document submitted must contain the complete text of the agency's systems of records. These systems should be submitted in machine readable format; either Optical Character Recognition (OCR) Type or on magnetic tape in accordance with the specifications in the Appendix to these guidelines. Agencies that are unable to supply documents in machine readable form should contact the OFR promptly.

In the signed preamble to the document, agencies should describe any changes included in the systems of records that were not previously published in the FEDERAL REGISTER. This includes additions, deletions, and substantive changes to the system of records. The preamble should also include citations to the FEDERAL REGISTER issue where the agency last republished their systems in full text together with citations for any subsequent amendments.

#### TABLE OF CONTENTS

Each agency must also include a table of contents immediately preceding the

text of the systems of records. The table of contents should be arranged in the order of appearance of the systems.

#### NUMBER OF COPIES

Three copies of the document (one original and two certified) must be submitted to the OFR. If a tape is submitted as part of the document, two single-spaced printouts of the material on the tape should accompany the document. Upon receipt of the document, the OFR will schedule publication as soon as possible. Normal FEDERAL REGISTER publication schedules do not apply.

#### RULES AND REGULATIONS

The OFR will compile each agency's rules and regulations pertaining to the Privacy Act and publish them with the systems in the Compilations. The rules and regulations will be compiled as of July 1, 1977. If any revisions are planned, the agency should be certain to have them in by that date to insure appearance in the Compilation. Only rules published in final form by that date will be included.

#### AGENCY OVERRUNS

Before final printing of the Compilation volumes, agencies will be given the opportunity to order overruns from the Government Printing Office for the part in which their material appears.

#### FOR FURTHER INFORMATION

Any questions or problems with regard to these guidelines or publication of the Annual Compilation should be directed to the Privacy Act Coordinator by calling (202) 523-5240, or by writing the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. The Office is located in Room 3401, 1100 L Street NW., Washington, D.C.; office hours are from 8:45 a.m. to 5:15 p.m.

FRED J. EMERY,  
Director of the Federal Register.

### INPUT REQUIREMENTS FOR FR PRIVACY ACT EDIT PROGRAM UTILIZING OCR SCANNABLE COPY

#### Typing Requirements

Typewriters must have 10 character per inch pitch, OCR-A size I type font with 85 characters and/or symbols and space bar which conform to FIPS PUB 32.

The following FIPS PUB 32 symbols will not be used:

- | long vertical mark (field identifier) fig. II-24.
- ∩ symbol fork, figure II-22.
- group erase, figure II-96.

The symbol hook (∩) figure II-21 will occasionally be used to indicate special functions.

The character erase (■) figure II-95, will be used to correct typing errors, as follows:

- delete previous letter
- delete all characters, back to, but not including, previous space
- delete entire line, back to the left hand margin.

Corrections on copy will not be made by erasing, white-out, or striking out. Only clean copy, with the exception of the character erase used for correcting errors, will be acceptable.

Copy must be typed double space at a 5 or 6 lines per inch pitch.

Spacing between words or sentences will be restricted to 2 spaces.

Operator must distinguish between figure one (1) and lower case letter ell (l) and between figure zero and capital letter O. These characters are not interchangeable.

Hyphens must never appear at the end of a line. If a hyphenated word must extend beyond the image area, use 2 erase symbols and start a new line. Strikes over previously typed letters are acceptable for this function only when the insertion of the two erase symbols would fall outside the right side margins.

Quotation marks—(“) for single open quotes; (”) for double open quote; (’) for single close quote and apostrophe; (’) for double close quote.

A one-time carbon ribbon that is equivalent to an IBM 3121 Black Ribbon Part No. 1136108 or 1136390 is normally adequate to meet requirements.

#### Paper Requirements

Paper will be made available through the Office of the Federal Register and will have preprinted on it, in non-OCR readable ink, margins, alinement and first character positions. Indents for 3, 6, and 9 spaces are also marked and are referred to in these specifications.

Margins and alinement are critical and must be followed.

#### Data Identifiers (Keyword Indicators)

The codes listed following these paragraphs must be placed immediately in front of the data they refer to. These codes will cause the correct function code and heading to be added by the edit program.

1. Data entries are to be preceded by a keyword indicator; the character (r), and a letter as assigned.
2. The keyword indicators and the subsequent letter causes the edit program to generate the proper headings as they appear on the following list.
3. Data may reflect either a textual paragraph or column/list format. The start of each paragraph is a new line, with a 3-space indent. When names, addresses, etc., require a column list format, each individual line will be a new line with a 6-space indent. It is advisable, where possible, to enter names, addresses, etc., in paragraph form.

Keyword and letter	Paragraph title
rA	(NONE)*
rB	System name:
rC	Security classification:
rD	Security location:
rE	Categories of individuals covered by the system:
rF	Categories of records in the system:
rG	Authority for maintenance of the system:
rH	Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
rI	Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:
rJ	Storage:
rK	Retrievability:
rL	Safeguards:
rM	Retention and disposal:
rN	System manager(s) and address:
rO	Notification procedure:
rP	Record access procedures:
rQ	Contesting record procedures:
rR	Record source categories:
rS	Systems exempted from certain provisions of the act:

\*Unique system number assigned by the submitting department. To be used in creating an index. First position after rA must be either a blank or alphabetic character, 20 characters maximum.

For further information on scanner input contact the Privacy Act Coordinator at the Office of the Federal Register.

## INPUT REQUIREMENTS FOR FR PRIVACY ACT EDIT PROGRAM

1. All files will be submitted on 1/2 inch wide magnetic tape whose recording mode is 9 track. Acceptable recording densities are 800 or 1600 CPI.
2. Files are to be devoid of equipment-oriented identification label records, i.e., unlabeled.
3. Files are comprised of blocks of data not to exceed 3000 characters.
4. Data entries are to be preceded by a keyword indicator, the character "+", and a number as assigned. See attachment I.
5. The keyword indicators and the subsequent number causes the edit program to generate the proper headings as they appear on attachment I.
6. Data may reflect either a textual paragraph or column/list format. The start of each paragraph is preceded by the character "\$". When names, addresses, etc., require a column list format, each individual line will be preceded by the character "%". It is advisable, where possible, to enter names, addresses, etc., in paragraph form.
7. The character set indicated in attachment II provides for upper and lower case letters, the numbers zero through nine, and the normally used punctuation, e.g., period, comma, colon, semicolon, hyphen, em dash, sbil, exclamation mark, question mark, quote, apostrophe, ampersand, asterisk, and open and close parens.

These codes represent the characters to be called by the composition program in composing the submitted data. Any fractions, math signs, etc., are to be spelled out.

## ATTACHMENT I

Keyword and number	Paragraph title
+1	(NONE)*
+2\$	System name:
+3\$	Security classification:

\*Unique system number assigned by the submitting department. To be used in creating an index. First position after +1 must be either a blank or alphabetic character. 20 characters maximum.

## ATTACHMENT I — Continued

Keyword and number	Paragraph title
+4\$	System location:
+5\$	Categories of individuals covered by the system:
+6\$	Categories of records in the system:
+7\$	Authority for maintenance of the system:
+8\$	Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
+9\$	Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:
+9A\$	Storage:
+9B\$	Retrievability:
+9C\$	Safeguards:
+9D\$	Retention and disposal:
+10\$	System manager(s) and address:
+11\$	Notification procedure:
+12\$	Record access procedures:
+13\$	Contesting record procedures:
+14\$	Record source categories:
+15\$	Systems exempted from certain provisions of the act:
+16	**

\*\*End description indicator. For use by DOD. Positions 20-24 contain record count for checking. Files will be in blocked records with control records in front of entry records.

## ATTACHMENT II

## PART I

Hex 0	Character	Hex 1	Character	Hex 2	Character	Hex 3	Character	Hex 4	Character	Hex 5	Character	Hex 6	Character	Hex 7	Character
00	By pass	10		20		30		40		50	&	60	- hyphen	70	
01		11		21		31		41		51		61	/ slash	71	
02		12		22		32		42		52		62		72	
03		13		23		33		43		53		63		73	
04		14		24		34		44		54		64		74	
05		15		25		35		45		55		65		75	
06		16		26		36		46		56		66		76	
07		17		27		37		47		57		67		77	
08		18		28		38		48		58		68		78	
09		19		29		39		49		59		69		79	
0A		1A		2A		3A		4A		5A		6A		7A	: colon
0B		1B		2B		3B		4B	period	5B	\$ para-graph	6B	comma	7B	
0C		1C		2C		3C		4C		5C		6C	% list	7C	
0D		1D		2D		3D		4D	( open paren	5D	) close paren	6D	- em dash	7D	apos
0E		1E		2E		3E		4E	+ key word	5E	; semi-colon	6E		7E	
0F		1F		2F		3F		4F		5F		6F	?	7F	" quote

## NOTICES

## ATTACHMENT II

## PART II

Hex 8	Character	Hex 9	Character	Hex A	Character	Hex B	Character	Hex C	Character	Hex D	Character	Hex E	Character	Hex F	Character
80		90		A0		B0		C0		D0		E0		F0	0 zero
81	a	91	i	A1		B1		C1	A	D1	J	E1		F1	1
82	b	92	k	A2	s	B2		C2	B	D2	K	E2	S	F2	2
83	c	93	l	A3	t	B3		C3	C	D3	L	E3	T	F3	3
84	d	94	m	A4	u	B4		C4	D	D4	M	E4	U	F4	4
85	e	95	n	A5	v	B5		C5	E	D5	N	E5	V	F5	5
86	f	96	o	A6	w	B6		C6	F	D6	O	E6	W	F6	6
87	g	97	p	A7	x	B7		C7	G	D7	P	E7	X	F7	7
88	h	98	q	A8	y	B8		C8	H	D8	Q	E8	Y	F8	8
89	i	99	r	A9	z	B9		C9	I	D9	R	E9	Z	F9	9
8A		9A		AA		BA		CA		DA		EA		FA	
8B		9B		AB		BB		CB		DB		EB		FB	
8C		9C		AC		BC		CC		DC		EC		FC	
8D		9D		AD		BD		CD		DD		ED		FD	
8E		9E		AE		BE		CE		DE		EE		FE	
8F		9F		AF		BF		CF		DF		EF		FF	



This sample illustrates how a system notice will look with the codes required by the specifications appearing above. NOTE THAT THE ACTUAL HEADINGS, "SYSTEM NAME," "LOCATION," ETC., SHOULD NOT BE PRINTED OR TYPED, BUT ONLY THE SYMBOLS. The program developed by the Government Printing Office will insert the headings where appropriate.

+1 DOD 412.07.

+2\$ Research Clearance Files 412.07—DOD/Navy.

+4\$ Records Management Division, Administrative Management Directorate, the Adjutant General Center Office of the Secretary of the Army.

+5\$ U.S. citizens, doing unofficial research, who apply for access to Army classified files.

+6\$ Individual's application for related processing papers and access authorization and extension; correspondence between the Records Management Division and (1) applicant, (2) records custodians, (3) other Government agencies; retained copies of research notes and manuscript and selected documents.

+7\$ Section 12, Executive Order 11652, "Classification and Declassification of

National Security Information and Material."

+8\$ Records are used to obtain clearance for access to classified information by applicant; to obtain approval of research subject matter; to determine location, availability and classification of records desired by the researchers; to request and coordinate the review of manuscript; and to enable discussion of proposed or ongoing research when problems arise. Primary users are the Office of the Secretary of the Army, and Offices of the Department of the Army Staff and major commands.

+9\$

+9A\$ Paper records in file folders.

+9B\$ Filed alphabetically by last name of researcher.

+9C\$ Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

+9D\$ Records are permanent. They are retained in active file until end of calendar year in which research project is completed, held an additional year in inactive file, and subsequently retired

to the Washington National Records Center.

+10\$ The Secretary of the Army, thru his designated representative, The Adjutant General, Headquarters, Department of the Army, the Pentagon, Washington, D.C.

+11\$ Information may be obtained from:

% Hq DA (DAAG-AMR-S)

% Room GA 084

% Forrestal Building

% Washington, D.C. 20314

% File Area Code 202/693-1847.

+12\$ Requests from individuals should be addressed to: Same address as stated in the notification section above.

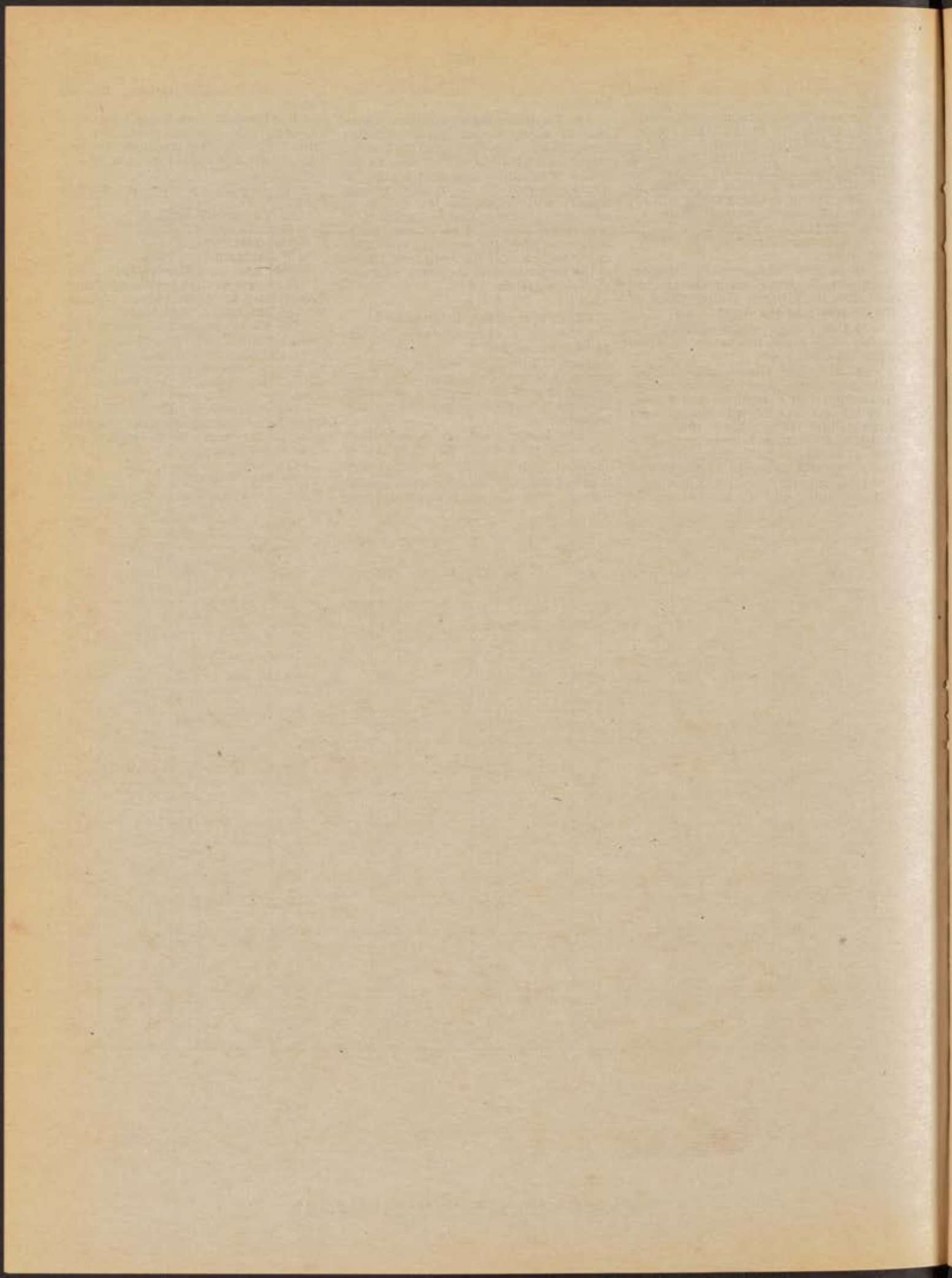
+13\$ The Departments' rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the rules section of the FEDERAL REGISTER.

+14\$ Application and related forms from the individual researcher Department of the Army Staff agencies and other federal agencies.

+15\$ None.

+16 (Record count)

[FR Doc. 77-10488 Filed 4-7-77; 8:45 am]



FRIDAY, APRIL 8, 1977

PART VI



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OFFICE OF  
MANAGEMENT  
AND BUDGET

■  
DEFERRALS

Energy Research and Development  
Administration and Commerce/Maritime  
Administration

## OFFICE OF MANAGEMENT AND BUDGET

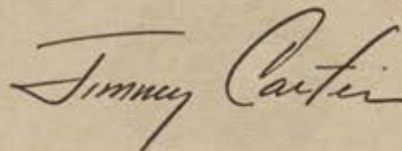
## DEFERRALS

ERDA and Commerce/Maritime Administration

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report two new deferrals of Energy Research and Development Administration funds totaling \$127.2 million. The deferrals have no effect on budgetary outlays for fiscal year 1977 or subsequent years. In addition, I am reporting a revision to a previously transmitted Department of Commerce deferral.

The details of each deferral are contained in the attached reports.



THE WHITE HOUSE, *April 4, 1977.*

## CONTENTS OF SPECIAL MESSAGE

(in thousands of dollars)

<u>Deferral #</u>	<u>Item</u>	<u>Budget Authority</u>
	Commerce:	
	Maritime Administration	
D77-47A	Ship construction.....	200,900
	Energy Research and Development Administration:	
D77-55	Operating expenses.....	80,500
D77-56	Plant and capital equipment.....	46,660
	Total, deferrals.....	328,060

\*\*\*\*\*

SUMMARY OF SPECIAL MESSAGES  
FOR FY 1977

(in thousands of dollars)

	<u>Rescissions</u>	<u>Deferrals</u>
Tenth special message:		
New items.....	---	127,160
Changes to amounts previously submitted.....	---	---
Effect of the tenth special message.....	---	127,160
Previous special messages.....	1,040,378	7,088,428
Total amount proposed in special messages.....	1,040,378	7,215,588
	(in 13 re- scission proposals)	(in 56 deferrals)

NOTE: All amounts listed represent budget authority except for \$134,807,092 consisting of two general revenue sharing deferrals of outlays only (D77-26 and D77-27A). Reports for D77-26 and D77-27A are included in the special messages of October 1, 1976, and December 3, 1976, respectively.

## SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D77-47, transmitted to the Congress on January 17, 1977, and printed as House Document No. 95-48 and Senate Document No. 95-19.

Deferral No. D77-47, previously reported for the Ship Construction appropriation of the Maritime Administration, was based on 1977-78 shipbuilding plans presented in the 1978 budget submitted to Congress on January 17, 1977. This supplementary report is based on current projections of demand for U.S. shipbuilding as reflected in the revised 1978 budget submitted to the Congress on February 22, 1977.

The revised deferral anticipates that an estimated \$102.9 million of the total amount deferred will be made available for obligation in fiscal 1977 as firm ship construction contracts are ready to be made. The remaining \$98 million is planned for deferral for the entire year. The original report indicated that all \$200.9 million would be deferred throughout fiscal 1977.

Deferral No: D77-47A

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority \$ _____ (P.L. _____)
bureau Maritime Administration	Other budgetary resources <u>362,811,241</u>
Appropriation title & symbol  Ship Construction 13X1708	Total budgetary resources <u>362,811,241</u>
	Amount to be deferred: Part of year <u>\$102,900,000*</u>
	Entire year <u>98,000,000*</u>
OMB identification code: 13-1708-0-1-406	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act
Grant program <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multiple-year _____ (expiration date) <input checked="" type="checkbox"/> No-year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

\* Justification

This appropriation, available until expended, provides subsidies to U.S. shipyards for the construction and reconstruction of ships for foreign trade.

This revised deferral is based on anticipated new shipbuilding contracts during fiscal year 1977. The amount of \$102,900,000 is being deferred for part of the year. It is anticipated that these funds will be apportioned as shipbuilding contracts become ready for obligation.

The amount of \$98,000,000 is being deferred for the entire year but will be used in succeeding years. Provision is made under the Antideficiency Act (31 U.S.C. 665) for the phased use of multi-year funds.

Estimated Effects

The deferral will not delay planned construction or conversion of subsidized ships and will not affect the international competitive position of U.S. shipyards.

Outlay Effect

There is no outlay effect of this deferral.

\* Revised from previous report.

Deferral No: D77-55

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

Agency <u>Energy Research and Development</u> <u>Administration</u>	New budget authority <u>\$ 4,669,338,000</u> (P.L. 94-355 & 94-373)
Bureau	Other budgetary resources <u>1,802,626,059</u>
Appropriation title & symbol	Total budgetary resources <u>6,471,964,059</u>
Operating Expenses 89 x 0100	Amount to be deferred:
	Part of year \$ _____
	Entire year <u>80,500,000</u>
OMB identification code: 89-0100-0-1-999	/Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act
Grant program <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual	Type of budget authority: <input checked="" type="checkbox"/> Appropriation
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input type="checkbox"/> Contract authority
<input checked="" type="checkbox"/> No-year	<input type="checkbox"/> Other _____

Justification

The Energy Research and Development Administration operating expenses appropriation is used for the conduct of energy research and development, basic research, and for nuclear research, development, and production related to national defense. The amount deferred is made up of unobligated balances brought forward into fiscal 1977. These balances are not needed for obligation in 1977 but may be needed in future years and are, therefore, reserved for contingencies.

Estimated Effects

There are no programmatic or budgetary effects of the deferral because the funds represent obligational authority in excess of that needed to conduct the FY 1977 program as appropriated.

Outlay Effect

No effect on outlays results from this deferral action.



Deferral No: D77-56

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

Agency Energy Research and Development Administration	New budget authority (P.L. 94-355 & 94-373)	\$ 1,634,630,000
Bureau	Other budgetary resources	106,534,747
Appropriation title & symbol  Plant and Capital Equipment 89X0103	Total budgetary resources	<u>1,741,164,747</u>
	Amount to be deferred:	
	Part of year	\$ _____
	Entire year	<u>46,660,000</u>
OMB identification code: 89-0103-0-1-999	Legal authority (in addition to sec. 1013):	
Grant program <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act	
Type of account or fund:	<input type="checkbox"/> Other _____	
<input type="checkbox"/> Annual	Type of budget authority:	
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input checked="" type="checkbox"/> Appropriation	
<input checked="" type="checkbox"/> No-year	<input type="checkbox"/> Contract authority	
	<input type="checkbox"/> Other _____	

Justification

The amount deferred is made up of funds appropriated for 1977 and prior years for the Clean Boiler Fuel from Coal project (Coalcon). The funds may not be required for obligation in 1977 due to severe engineering difficulties which prevent further work on the project. The deferral is planned to be maintained pending a decision on future Coalcon activities and a determination of project termination costs. Once such a determination is made, any remaining funds will either be proposed for rescission or reprogramming, if appropriate.

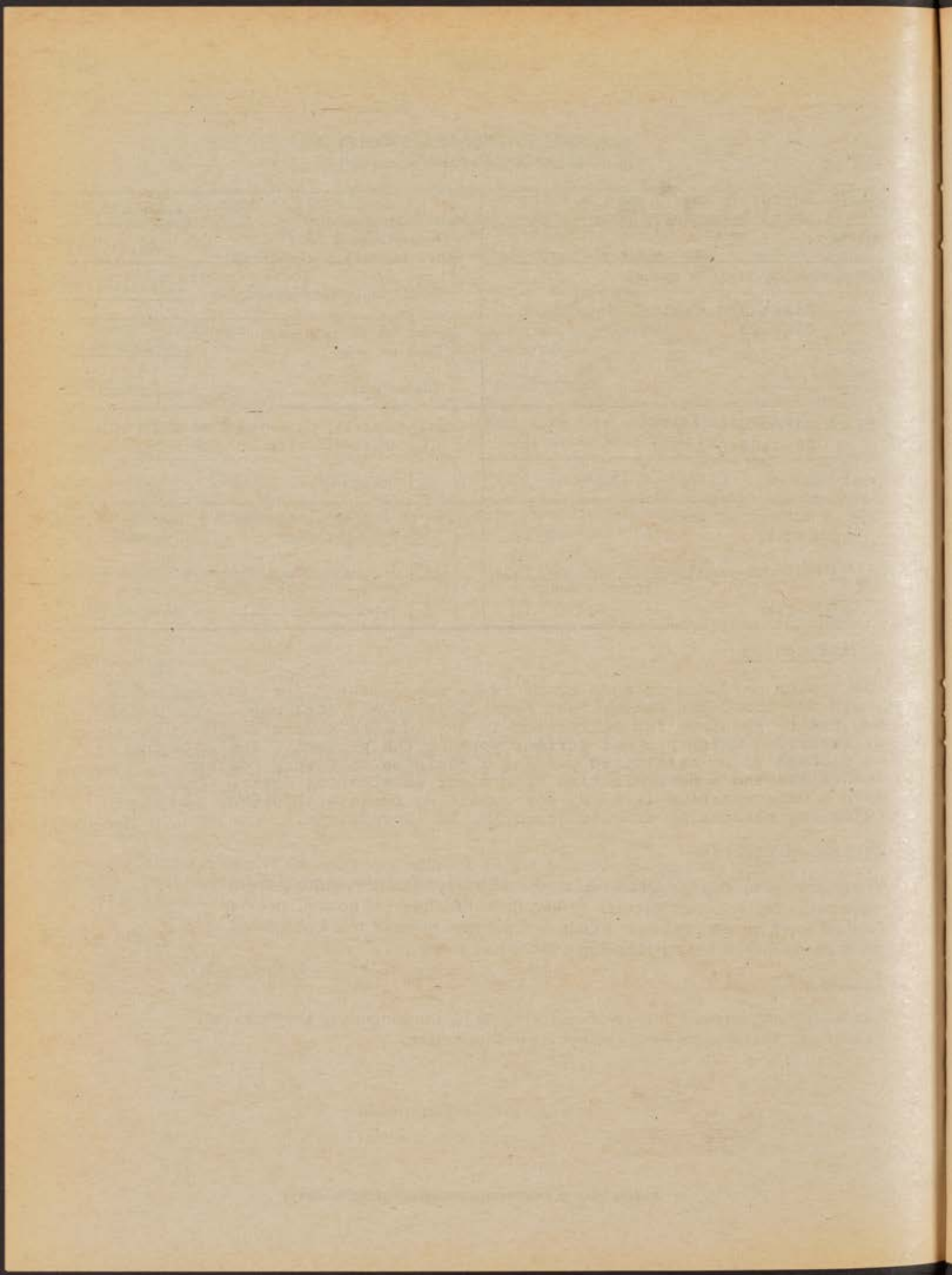
Estimated Effects

There are no further programmatic or budgetary effects resulting from the deferral. Technical problems, rather than this deferral action, prevent further work on the project. Funds are not now planned to be obligated because the project is undergoing a technical review.

Outlay Effect

Available funds exceed current requirements by the amount of the deferral. Therefore, there is no outlay effect from this action.

[FR Doc.77-10517 Filed 4-6-77; 11:48 am]



# **federal register**

**FRIDAY, APRIL 8, 1977**

**PART VII**



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## **DEPARTMENT OF LABOR**

**Employment Standards  
Administration**

■

### **MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION**

**General Wage Determination Decisions**

## DEPARTMENT OF LABOR

Employment Standards Administration  
MINIMUM WAGES FOR FEDERAL AND  
FEDERALLY ASSISTED CONSTRUCTION  
General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

## MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

## NEW GENERAL WAGE DETERMINATION DECISIONS

North Carolina.....	NC77-1046
Pennsylvania.....	PA77-3039, PA77-3043

## MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:		
AL76-5090 .....		Oct. 8, 1976.
Arkansas:		
AL76-5090 .....		Do.
AR77-4018 .....		Feb. 4, 1977.
AR77-4061 .....		Mar. 11, 1977.
Florida:		
AL76-5090 .....		Oct. 8, 1976.
FL77-1028 .....		Mar. 18, 1977.
Idaho:		
ID77-5023 .....		Feb. 25, 1977.
Iowa:		
IA76 - 4146; IA76 - 4148; IA76-4149 .....		Sept. 10, 1976.
IA76-4150 .....		Sept. 17, 1976.
IA76 - 4173; IA76 - 4174; IA76-4175 .....		Oct. 15, 1976.
IA76-4185 .....		Nov. 19, 1976.
IA77-4004 .....		Jan. 21, 1977.
Kentucky:		
AL76-5090 .....		Oct. 8, 1976.
Louisiana:		
AL76-5090 .....		Do.
Mississippi:		
AL76-5090 .....		Do.
MS77-1030 .....		Mar. 25, 1977.
Missouri:		
AL76-5090 .....		Oct. 8, 1976.
Nevada:		
NV77-5022; NV77-5031 .....		Mar. 18, 1977.
New York:		
NY76-3256 .....		Oct. 8, 1976.
NY77-3022 .....		Feb. 4, 1977.
Ohio:		
OH77-2037 .....		Mar. 11, 1977.
Oregon:		
OR77-5033 .....		Mar. 25, 1977.
Tennessee:		
AL76-5090 .....		Oct. 8, 1976.
Texas:		
AL76-5090 .....		Do.
TX76-4192 .....		Dec. 17, 1976.
TX76-4193 .....		Dec. 28, 1976.
Virginia:		
MD77-3041 .....		Mar. 18, 1977.
Washington:		
WA77-5032 .....		Apr. 1, 1977.
Washington:		
DC77-3040 .....		Mar. 18, 1977.
Washington, D.C.:		
Wisconsin:		
WI76-2155 .....		Nov. 26, 1976.
WI76 - 2157; WI76 - 2158; WI76-2160; WI76-2161 .....		Dec. 17, 1976.
WI76-2163; WI76-2164 .....		Dec. 10, 1976.

## 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.

Arkansas:		
AR76-4129 (AR77-4082) ..		July 23, 1976.
AR76-4133 (AR77-4083) ..		July 13, 1976.
AR76-4188 (AR77-4078) ..		Nov. 19, 1976.
Illinois:		
IL76-5038 (IL77-5038) .....		Apr. 16, 1976.
Indiana:		
IL76-5038 (IL77-5038) .....		Do.
Kansas:		
KS77-4020 (KS77-4081) .....		Feb. 4, 1977.
KS77-4046 (KS77-4080); KS77-4048 (KS77-4079) ..		Feb. 25, 1977.
MO76-4103 (MO77-4076) ..		July 2, 1976.
MO76-4177 (MO77-4075) ..		Nov. 12, 1976.
Kentucky:		
KY76-1077 (KY77-1035) ..		July 23, 1976.
Michigan:		
IL76-5038 (IL77-5038) .....		Apr. 16, 1976.

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Minnesota:  
IL76-5038 (IL77-5038)..... Do.  
Missouri:  
MO76-4103 (MO77-4076)... July 2, 1976.  
MO76-4177 (MO77-4075)... Nov. 12, 1976.  
New Mexico:  
NM76-4181 (NM77-4077)... Do.  
NM77-4022 (NM77-4074)... Feb. 18, 1977.  
New York:  
IL76-5038 (IL77-5038)..... Apr. 16, 1976.  
Ohio:  
IL76-5038 (IL77-5038)..... Do.

Pennsylvania:  
IL76-5038 (IL77-5038)..... Do.  
PA76-3176 (PA77-3031).... June 18, 1976.  
Wisconsin:  
IL76-5038 (IL77-5038); Apr. 16, 1976.  
WI76-2045 (WI77-2042).

Signed at Washington, D.C., this 1st day of April 1977.

RAY J. DOLAN,  
Assistant Administrator,  
Wage and Hour Division.

NEW DECISION

STATE: Pennsylvania  
 COUNTY: Clinton, Centre, Buntingdon, Fulton & Mifflin  
 DECISION NO.: PA77-3039  
 DATE: Date of Publication  
 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			Education and/or App. Tr.
		H & W	Pensions	Vacation	
<b>ASBESTOS WORKERS</b>					
ZONE 1	\$9.95	.65	.60		.01
ZONE 2	10.11	.52	.70		.01
<b>AREA COVERED BY ASBESTOS WORKERS ZONES</b>					
ZONE - 1	Clinton County				
ZONE - 2	Centre, Buntingdon, Fulton and Mifflin Counties				
<b>BOILERMAKERS</b>					
<b>BRICKLAYERS &amp; STONEMASONS</b>					
ZONE 1	12.05	.75	1.00		.02
ZONE 2	8.80	.60	.80		.03
ZONE 3	9.80	.40	.50		.025
ZONE 4	9.60	.45	.50		.03
ZONE 4	9.80	.60	.80		
<b>AREA COVERED BY BRICKLAYERS AND STONEMASONS ZONES</b>					
ZONE - 1	Fulton and Buntingdon Counties				
ZONE - 2	Mifflin County				
ZONE - 3	Clinton County in its entirety, and the Remainder of Centre County				
ZONE - 4	Townships in Centre County, Bush, Halfmoon, Taylor, Patton, Worth and Huston				
<b>CARPENTERS &amp; SOFT FLOOR LAYERS</b>					
ZONE 1	9.17	.62	.82		.42
<b>CEMENT MASONS</b>					
ZONE 1	9.67				
ZONE 2	9.25	.12	.62		
ZONE 3	9.385	.50	.40		
<b>AREA COVERED BY CEMENT MASONS ZONES</b>					
ZONE - 1	Centre, Clinton and Mifflin Counties				
ZONE - 2	Buntingdon County				
ZONE - 3	Fulton County				

NEW DECISION

STATE: North Carolina  
 COUNTY: Durham  
 DECISION NO.: NC77-1046  
 DATE: Date of Publication  
 DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
Asbestos workers	5.25				
Bricklayers	6.00				
Carpenters	5.00				
Cement masons	4.75				
Electricians	5.00				
Glaziers	5.25				
Ironworkers:					
Structural, ornamental, reinforcing	5.50				.01
Laborers:					
Laborers	3.00				
Mason tenders	3.00				
Mortar mixers	3.32				
Plasterers' tenders	3.00				
Lathers	6.95				
Marble setters	5.25				
Painters, brush	3.76				
Plasterers	6.35				
Plumbers & pipefitters	5.85				
Roofers	4.00				
Sheet metal workers	4.81				
Soft floor layers	4.31				
Terrazzo workers	6.00				
Tile setters	5.20				
Truck drivers	3.25				
Welders - rate for craft.					
<b>POWER EQUIPMENT OPERATORS:</b>					
Backhoes	3.75				
Bulldozers	3.90				
Finishing machine	3.85				
Front end loaders	4.25				
Motor graders	4.39				
Rollers	4.10				
Scrapers - Pan	4.01				
Tractor	3.90				

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
<b>ELECTRICIANS</b>					
ZONE - 1	\$11.35	.35	.20+1%	.60	.10
ZONE - 2	9.91	.45	1%+.31		1/4 of 1%
ZONE - 3	9.23	.40	1%+.35	.60	.02

AREA COVERED BY ELECTRICIANS ZONES

- ZONE - 1 Fulton, Huntington and Remainder of Centre County
- ZONE - 2 Mifflin County
- ZONE - 3 Clinton County in its entirety; Townships in Centre County: Burnside, Curtin, Liberty, Howard, Marion, Walker, Miles and Raines

<b>ELEVATOR CONSTRUCTORS</b>	10.20	.545	.35	42%+6	.02
<b>ELEVATOR CONSTRUCTORS HELPERS</b>	7.01 o/LR	.545	.35	42%+6	.02
<b>ELEVATOR CONSTRUCTORS HELPERS (PROB)</b>	5.0 of JR				
<b>IRONWORKERS</b>					
ZONE - 1	9.685	.70	1.155		.07
ZONE - 2	10.63	.84	1.21		.03
ZONE - 3	9.84	.60	.90		

AREA COVERED BY IRONWORKERS ZONES

- ZONE - 1 Centre and Clinton Counties
- ZONE - 2 Huntington and Mifflin Counties
- ZONE - 3 Fulton County

<b>LARGERS</b>					
ZONE - 1	7.10	10%	8%		
Unskilled laborers					
Plasterers Tenders	7.15	10%	8%		
ZONE - 2	6.95	10%	8%		
Unskilled laborers					
Plasterers Tenders	7.00	10%	8%		

AREA COVERED BY LARGERS ZONES

- ZONE - 1 Clinton, Centre and Mifflin Counties
- ZONE - 2 Fulton and Huntington Counties

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
<b>LARGERS</b>					
ZONE - 1	98.97		.20		.01

AREA COVERED BY LARGERS ZONES

- ZONE - 1 Centre, Clinton and Huntington Counties

<b>LEAD BURNERS</b>	10.75	.40	.25	c	.01
<b>LINE CONSTRUCTION</b>					
ZONE - 1	11.27	.35	1%		3/8%
Lineman	6.74	.35	1%		3/8%
Groundman	7.87	.35	1%		3/8%
Winch truck operators					
ZONE - 2	10.30	.35	3%		3/8%
Linemen, dynamite man, heavy equipment operators	6.97	.35	3%		3/8%
Groundman	7.28	.35	3%		3/8%
Winch truck operator					
ZONE - 3	10.23	.35	1%		3/8%
Lineman	7.15	.35	1%		3/8%
Winch truck operators	6.12	.35	1%		3/8%
Groundman					

AREA COVERED BY LINE CONSTRUCTION ZONES

- ZONE - 1 Centre, Fulton and Huntington Counties
- ZONE - 2 Clinton County
- ZONE - 3 Mifflin County

<b>MILLWRIGHTS</b>	9.19	6%	6%	12%	1/2%
<b>PAINTERS</b>					
ZONE - 1	8.65	.40	.30		.05
Brush	8.91	.40	.30		.05
Tapers	9.91	.40	.30		.05
Hazardous					
ZONE - 2	8.59	.75	.45		.12
Commercial	9.09	.75	.45		.12
Brush & Roller	9.44	.75	.45		.12
Spray	9.94	.75	.45		.12
Industrial					
Brush, Steel & Tank					
Spray					

Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
	H & W	Pensions	Vacation	

AREA COVERED BY PAINTERS ZONES

ZONE - 1 Centre, Fulton, Huntingdon, Mifflin Counties  
 ZONE - 2 Clinton County

Zone	Basic Hourly Rates	H & W	Pensions	Vacation	Education and/or App. Tr.
PAINTERS	10.60	5%	10%		.50%
ZONE - 1	9.76	.64	.45	.20	.05
ZONE - 2	10.40	.73	.87		.21
ZONE - 3	10.45	.30	.65		.12

AREA COVERED BY PLUMBERS AND STEAMFITTERS ZONES

ZONE - 1 Clinton County  
 ZONE - 2 Huntingdon County  
 ZONE - 3 Centre, Fulton & Mifflin Counties

Zone	Basic Hourly Rates	H & W	Pensions	Vacation	Education and/or App. Tr.
ROOFERS	7.90	.35	.40		
ZONE - 1	8.35	.35	.40		
ZONE - 2	9.20	.75	.70		
ZONE 3	10.53	.77	1.50		.06
ZONE 4	9.71	.60	.55		

AREA COVERED BY ROOFERS ZONES

ZONE - 1 Fulton County  
 ZONE - 2 Clinton County  
 ZONE - 3 Huntingdon County  
 ZONE - 4 Centre & Mifflin Counties

Zone	Basic Hourly Rates	H & W	Pensions	Vacation	Education and/or App. Tr.
SHEET METAL WORKERS	10.08	.50	.50		.02
ZONE - 1	9.76	1.17	1.03		.03
ZONE - 2					

AREA COVERED BY SHEET METAL WORKERS ZONES

ZONE - 1 Clinton County  
 ZONE - 2 Centre, Huntingdon, Fulton, Mifflin Counties

Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
	H & W	Pensions	Vacation	
SPRINKLER FITTERS	.60	.90		.06
TRUCK DRIVERS:				
ZONE - 1	6.96	e	e	
Service, dump, flat top, jeep, fuel & water	7.04	d	e	
Transit-mix, dump trailer, winch truck	7.11	d	e	
Euclyds & tractor trailer	6.86	d	e	
Zone - 2				
Pick-ups, dump, service trucks, flat trucks to and including 2 license plates	7.59	f	e	
Transit-mix, winch trucks, tractor, all types euclyds, ross lumber & trucks over 2 plates	7.84	f	e	
Zone - 3	7.00			

SPRINKLER FITTERS  
 TRUCK DRIVERS:  
 ZONE - 1  
 Service, dump, flat top, jeep, fuel & water  
 Transit-mix, dump trailer, winch truck  
 Euclyds & tractor trailer  
 Zone - 2  
 Pick-ups, dump, service trucks, flat trucks to and including 2 license plates  
 Transit-mix, winch trucks, tractor, all types euclyds, ross lumber & trucks over 2 plates  
 Zone - 3

AREA COVERED BY TRUCK DRIVERS ZONES

ZONE - 1 Centre, Huntingdon, Fulton Counties  
 ZONE - 2 Mifflin County  
 ZONE - 3 Clinton County

Zone	Basic Hourly Rates	H & W	Pensions	Vacation	Education and/or App. Tr.
TRUCK DRIVERS					
ZONE - 1					
ZONE - 2					
ZONE - 3					



Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

**PAID HOLIDAYS:**

New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day.

**Footnotes:**

- a. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
- b. Paid Holidays: A through F.
- c. 8 paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is available for work the days preceding and following the holiday.
- d. \$59.90 per month.
- e. \$14.00 per week.
- f. \$58.37 per month per employee who have worked sixty (60) hours during the month.
- g. \$33.57 per month for employee who have worked sixty (60) hours or more during the month.

Basic Hourly Rates	Fitape Benefits Payments			Elevators and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$11.175	.65	.80		.09
11.425	.65	.80		.09
11.675	.65	.80		.09
11.925	.65	.80		.09
11.025	.65	.80		.09
9.65	.65	.80		.09
10.15	.65	.80		.09
9.00	.65	.80		.09
7.95	.65	.80		.09
8.25	.65	.80		.09
8.35	.65	.80		.09
8.50	.65	.80		.09
8.75	.65	.80		.09

**CLASSIFICATION DEFINITIONS  
POWER EQUIPMENT OPERATORS**

**CLASS 1 -** Mastin-Western or similar type Under 25 ton, eastin-western or similar type 25 ton or over, auto grader (OMI or similar, backhoe, batch plant when conveyors are used for direct feeding or discharge, batch plant no conveyors for direct feeding or discharge (without oiler), cableway, chaisson drill, central mix plant, cranes (excluding overhead) (truck or crawler type), cranes tower (mobile) cranes tower (stationary) (climbing type) cranes hydraulic self contained over 18 ton cranes hydraulic self contained - 18 ton or less, derrick traveler (self propelled), derrick (all types) (when assistance required it will be an oiler or apprentice) derrick boats, dragline, dredge, engineer maintenance, franki or similar type pile driver, gradall (remote control or otherwise), helicopter (when used for erection purposes), helicopter hoist operators (when used for erection purposes), hi-lift 4 yds. or over, hoist-hod 2 cages up to 10 floors) Chicago Boom Attached hoist (50 ft. or over) (stacks, stoves or furnaces) hoist (slipform jobs hop to or similar type with 180° swing hop to or similar type with 360° swing local hoisting scooper, metro chip harvester or mobilizing or similar type, mucking machine (tunnel), multiple bowl machines, pipe driver (conic or similar type) (when assistance required it will be an oiler or apprentice), post driver-guard rail (truck mounted), post driver-guard rail (skid type), pumpcrete - mobile or similar type, quad nine, shovels (all types), slip form paver (OMI or similar), tractors - Boom Mounted (all types), tractors (all types with hydraulic backhoe attached), tug boat, whalley

CLASS 1-A - Austin-Western or similar type under 25 ton with jib, Austin-Western or similar type 25 ton or over with jib, cranes (boom or mast 100 ft. or over up to 150 ft. + \$.25) (truck or crawler type), cranes mobile (any type 15 ton or over placed on any bldg. structure + \$.25), hoist-bod (2 cages over 10 floors) Class I rate + \$.25, hoist single cage with

CLASS 1-B - Cranes (boom or mast over 150 ft. up to & including 200 ft. + \$.50) (truck or crawler type), engineer lead

CLASS 1-C - Cranes (boom or mast over 200 ft. + .75)

CLASS 2- Asphalt plant operator, Athey loader, Auger - truck or tractor, mounted, back filling machine, boat material or personnel carrying (powered) boat - job work (inboard or outboard), bulldozer, cable layer, compactor with blade, compressor (1) and air tupper (1) (combination), compressor (1) and guinite machine (1) (combination), concrete belt placer, crane - overhead, crushinf & screening plants, drill - davey or similar type drill - core (truck or skid mounted), drill - well & core (truck mounted), elevator (New buildings), excid loader, excavating equipment (all Other), forklift-hall or similar, grader, grader-elevating, greaser-equipment (head), hi-lift - less than 4 yds., hoist - one drum (4 floors or over), hoist - bod (buildings 4 floors or more), hoist - ( 2 drums or more in one unit), jumbo operator, locomotive, lift slab machine (hydraulic) mixer - paving, mucking machine, pipe cleaning machine, refrigeration plant (used for construction jobs that is, cooling concrete & holding banks), roas carrier (or similar type), scoop (single bow) (self-powered & tractor drawn), spreader - concrete, asphalt and stone, tower mobile (hoisting or lowering material), trencher, well point systems, (The following machines shall be considered minor), compressors (3 within a reasonable distance); generators electric (3) (over 5 KW up to 20 KW), pumps (1 1/2" discharge or less) ( 4 to 5 within reasonable distance), pumps (3) (over 1 1/2" discharge) (within reasonable distance), welding machines ( 4 to 6 within reasonable distance) (other than electrically driven), grout pump (10 H. P. or over), elevator (when used for alterations & remodeling all buildings), paver operator - asphalt (spreader), pumpcrete or similar type (not self-propelled), pumpcrete machine operator (stationary), tire repairman (when assigned job), welder (repairman)

CLASS 3 - Boiler, compactor (ridden or self-propelled), compressor (over 125 CFM and air pump), compressor (1) and sand blasting machine (1) (combination), crane (carry), curb builder (self-propelled), drills-well & horizontal truck mounted, forklifts (ridden or self-propelled), hoist one drum (regardless of power used), pavement breaker (self-propelled or ridden), pipe drem, roller, saw (concrete), soil stabilizer (pump type), stone crusher, stone spreader self-propelled, tractors (when used for snaking and hauling), tube finisher (CM or similar type), tupper, truck, (winch) truck or hydraulic boom (when hoisting & placing), (The following machines shall be considered minor) compressors (2), generators (2), mortar machine over 10 cu. ft., and single unit conveyor, pumps (1 1/2" discharge or less ( 2 to 3), pumps (over 1 1/2" discharge (2) in bank) (within reasonable distance), welding machine (2 to 3), (other than electrically driven)

CLASS 3-A - Conveyors 4 units or more

CLASS 4 - Ballast regulator, boring machine, broom, power (except push type), compressor - single (over 65 CFM), conveyor over 1 and up to 3 units (regardless of power used) form line machine, generator (over 5 KW), hoist (monorail) (regardless of power used) hoist roof (regardless of power used), hack machine or similar type, mixer concrete (regardless of power used) mixer mortar - over 10 cu. ft. (regardless of power used) pump (over 1 1/2" discharge regardless of power used) spray cure machine (power driven) steam jenny (or similar type) syphon (steam or air) welding machine single (300 amp or over) (other than electrically driven) plant, private or industrial air of steam valve

CLASS 5 - Compressor - 65 cubic ft. or under (regardless of power used) conveyor one (1) unit (regardless of power used) heaters - up to and including 6 jack motor hydraulic (single type) power driven ladavator, mixer mortar, (10 cubic ft. or under), mulching machine, pin puller (powered) pulverizer, pump - 1 1/2" discharge or less, seeding machine, spreader side delivery, shoulder (attachment) tile tasper (multiple heads) tractor farm (when used for landscaping) water blaster, oiler-truck crane 50 ton up to not incl. 100 ton

CLASS 6 - Brake man, deck hand, helicopter signalman, oiler, mechanic helper

CLASS 6-A Crane truck oiler & fireman

CLASS 6-B Oiler - Truck crane 50 ton up to & incl. 100 ton

CLASS 6-C Oiler - Truck crane 100 ton and over

DECISION NO. PA77-3043

STATE: Pennsylvania  
 COUNTY: Carbon, Monroe County,  
 Including Tobyhanna Army Depot,  
 and Pike County  
 Description of Work: Building  
 Construction (excluding single family homes and garden type  
 apartments up to and including 4 stories)

ELECTRICIANS	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ZONE - 1	\$10.60	.35	134.40		.02
ZONE - 2	10.37	.55	12 + .25	a	b
ZONE - 3	11.00	.62	124.50		.02
ZONE - 4	10.20	.50	134.50	.50	.10
ZONE - 5	9.75	.50	134.50	.50	.10

AREA COVERED BY ELECTRICIANS ZONES

- ZONE - 1 Touzansing, Lower Touzansing, E. Penn., Twp; the Borough of Parryville in their entirety
  - ZONE - 2 Remainder of Carbon County
  - ZONE - 3 Remainder of Monroe County
  - ZONE - 4 Tobyhanna Army Depot in Monroe County
  - ZONE - 5 Pike County
- ELEVATOR CONSTRUCTORS  
 ELEVATOR CONSTRUCTORS HELPERS  
 (Prob.)  
 GLAZIERS

AREA COVERED BY GLAZIERS ZONES

- ZONE - 1 Lausassa, Penn. Forest, Touzansing, Lower Touzansing, Palmetton, E. Penn., Franklin, Mahoning, Packer, Lehigh, Banks Twp., in Carbon County
- ZONE - 2 Remainder of Carbon County, Monroe County, including Tobyhanna Army Depot, and Pike County in its entirety

IRONWORKERS	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ZONE - 1	11.45	.84	1.21		
ZONE - 2	11.25	e			.10
Reinforcing	11.15	e			.10

AREA COVERED BY IRONWORKERS ZONES

- ZONE - 1 Carbon County, Monroe County, including Tobyhanna Army Depot
- ZONE - 2 Pike County

NEW DECISION

STATE: Pennsylvania  
 COUNTY: Carbon, Monroe County,  
 Including Tobyhanna Army Depot,  
 and Pike County  
 Description of Work: Building  
 Construction (excluding single family homes and garden type  
 apartments up to and including 4 stories)

ASBESTOS WORKERS BRICKLAYERS BRICKLAYERS & STONEMASONS	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ZONE 1	9.95	.65	.60		.01
ZONE 2	12.05	.75	1.00		.02
ZONE 3	9.75	.60	1.05		.01
ZONE 4	10.30	.50	.50		.01
ZONE 5	8.90	.60	.95		.01
ZONE 6	10.10	.65	.70		.01
ZONE 7	9.70	.55	.30		.01

AREA COVERED BY BRICKLAYERS & STONEMASONS

- ZONE - 1 Summit Hill, Mauch Chunk, Mahoning, Palmetton, Franklin, Touzansing, Lansfork & Lower Touzansing Twp., in Carbon County
- ZONE - 2 Kidder Township in Carbon County
- ZONE - 3 Remainder of Carbon County
- ZONE - 4 Tobyhanna Army Depot in Monroe County
- ZONE - 5 Pike County & Remainder of Monroe County

CARPENTERS

ZONE 1	9.73	.41	.63		
ZONE 2	9.50	.35	.40		.03
ZONE 3	9.73	.41	.63		.02
ZONE 4	10.61	.43	.50		.05

AREA COVERED BY CARPENTERS ZONES

- ZONE - 1 Carbon County; Including Twp. of Banks, Lausassa, Lehigh, Packer and Kidder
- ZONE - 2 Remainder of Carbon County
- ZONE - 3 Remainder of Monroe County
- ZONE - 4 Tobyhanna Army Depot in Monroe County, Pike County in its entirety

CEMENT MASONS

ZONE 1	8.075				
ZONE 2	9.70	.55	.30		
ZONE 3	9.15	.40	.40		

AREA COVERED BY CEMENT MASON ZONES

- ZONE - 1 Carbon County
- ZONE - 2 Tobyhanna Army Depot in Monroe County & Pike County
- ZONE - 3 Remainder of Monroe County

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
LABORERS					
ZONE - 1					
CLASS - 1	88.20	.48	.50		
CLASS - 2	8.35	.48	.50		
CLASS - 3	8.60	.48	.50		
ZONE - 2					
CLASS - 1	6.97	.35	.45		
CLASS - 2	7.22	.35	.45		
CLASS - 3	7.27	.35	.45		
CLASS - 4	7.47	.35	.45		

LABORERS CLASSIFICATIONS DEFINITIONS AND AREA COVERED

- ZONE - 1 Pike County, and Tobyhanna Army Depot in Monroe County
- CLASS - 1 Unskilled and window cleaners
- CLASS - 2 Semi skilled laborers; jackhammer operators, (each man when two required for operation of jackhammer) vibrator and buster men, wagon drill and all men handling dynamite, gas boggles 2" pumps and concrete mixers (up to 2 bags) and all pneumatic tools, non-metallic pipe layers and making of joints, clay, terra cotta ironstone, vitrified concrete handling of burning torches, asphalt or other material
- CLASS - 3 Plaster tenders and mason tenders and handling of all material to be used - masons & scaffold builders

LABORERS (Cont'd)  
 ZONE - 2 Carbon County, and Remainsder of Monroe County  
 Class I - Unskilled laborers & window cleaners

Class II - Operator of jackhammer, paving breaking & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drills & men handling burning torches in the wrecking og buildings, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for the same & cofferdams (below 10')

Class III - Plaster & mason tenders, scaffold builders & handling of all materials to be used by plasterers & masons, brick & block loaded on aprlets, cement finisher tenders, gruniting & moided-D & samblater helpers, power hoggles, to get mason tender rates, all floor bar&ener & "cure" application shall be the work of the mason tender. All pumps, such as the concrete, plaster, mortar & water, installing plastic or other non-solid refractory materials in connection with boiler work

Class IV - Barrio tamper operator

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
		H & W	Pensions	Vacation		
LABORERS						
ZONE - 1	\$10.04		.10			.01
ZONE - 2	9.71	.40	.25			.01

AREA COVERED BY LABORERS ZONES

- ZONE - 1 - Monroe County, Including Tobyhanna Army Depot, and Pike County
- ZONE - 2 - Carbon County

LEAD BURNERS

LINE CONSTRUCTION

- Lineman, dynamite man, heavy equipment operator
- Winch truck operator
- Groundman

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
		H & W	Pensions	Vacation		
LEAD BURNERS						
LINE CONSTRUCTION						
Lineman, dynamite man, heavy equipment operator	10.75	.40	.25			.01
Winch truck operator	10.30	.35	.31			3/81
Groundman	7.28	.35	.31			3/81
	6.97	.35	.31			3/81

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
MARBLE SETTERS					
ZONE - 1	\$8.50	.60	1.05		
ZONE - 2	9.50	.50			
ZONE - 3	9.70	.55	.30		

AREA COVERED BY MARBLE SETTERS ZONES

- ZONE - 1 Carbon County
- ZONE - 2 Tobyhanna Army Depot & Pike County
- ZONE - 3 Remainder of Monroe County

MILLWRIGHTS					
ZONE - 1	10.91	.43	.50		.05
ZONE - 2	10.13	.41	.53		.01
ZONE - 3	10.61	.35	.40		.03

AREA COVERED BY MILLWRIGHTS ZONES

- ZONE 1 Tobyhanna Army Depot in Monroe County
- ZONE - 2 Remainder of Monroe County, and Pike County in its entirety

PAINTERS					
ZONE - 1	8.65	.40	.30		.05
Brush	8.65	.40	.30		.05
Tapers	8.91	.40	.30		.05
Hazardous	9.91	.40	.30		.05
ZONE - 2					
Brush & Roller	8.10		1.00		
Structural Steel	9.10		1.00		
Spray	9.60		1.00		
ZONE - 3					
Brush	8.05	.83	.60		
Spray	9.05	.83	.60		
Steel	9.05	.83	.60		

AREA COVERED BY PAINTERS ZONES

- ZONE - 1 Carbon County
- ZONE - 2 Tobyhanna Army Depot in Monroe County, and Pike County in its entirety
- ZONE - 3 Remainder of Monroe County

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
FILEDRIVERS					
ZONE - 1	\$10.42	1.88	1.30	8	.12
PLASTERERS					
ZONE - 1	9.75	.60	1.05		.01
ZONE - 2	10.30	.50	.50		
ZONE - 3	8.90	.60	.95		
ZONE - 4	9.30	.40	.40		
ZONE - 5	9.70	.55	.30		

AREA COVERED BY PLASTERERS ZONES

- ZONE - 1 Summit Hill, Mauch Chunk, Mahoning, Palmetton, Franklin, Townansing, Lansford & Lower Townansing Twp., in Carbon County
- ZONE - 2 Kidder Township in Carbon County
- ZONE - 3 Remainder of Carbon County
- ZONE - 4 Tobyhanna Army Depot in Monroe County, and Pike County in its entirety
- ZONE - 5 Remainder of Monroe County

PLUMBERS					
ZONE - 1	10.74	.40	.75		.04
ZONE - 2	10.69	.50	.50		.01
ZONE - 3	10.02	.57	.92		.01

AREA COVERED BY PLUMBERS ZONES

- ZONE - 1 Tobyhanna Army Depot in Monroe County, and Pike County in its entirety
- ZONE - 2 Remainder of Monroe County
- ZONE - 3 Carbon County

ROOFERS					
ZONE - 1	10.93	.15	.50		
Composition & Slate	11.43	.15	.50		
Slab & Concrete Plank	7.21	.15	.50		
Helpers					
ZONE - 2	9.20	.75	.70		
Composition & Kettlemen					
ZONE - 3	9.81	.42	.47		
Composition & Kettlemen	9.585	.42	.47		
Helpers					

POWER EQUIPMENT OPERATORS

GROUP	Basic Hourly Rates	Fringe Benefits Payments		App. Tr.
		H & W	Pensions	
GROUP 1	\$11.60	5.5%	9.5%	a
GROUP 2	11.31	5.5%	9.5%	a
GROUP 3	10.44	5.5%	9.5%	a
GROUP 4	9.67	5.5%	9.5%	a
GROUP 5	8.20	5.5%	9.5%	a
GROUP 6	8.29	5.5%	9.5%	a
GROUP 7	11.85	5.5%	9.5%	a
GROUP 7-A	12.10	5.5%	9.5%	a
GROUP 7-B	12.34	5.5%	9.5%	a

CLASSIFICATIONS DEFINITIONS

- GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above
- GROUP 2: All types of cranes, all types of hoists, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, jacks 2TS and over all types overhead cranes, building hoists (double drum) gantries, mucking machines in tunnel, all front end loaders 3-1/2 o.y. and over, tandem scrapers, pipin type hoists, boat Cap-tains, batch plant operators (concrete) drills, self-contained rotary drills, fork lift, 20 ft lift and over machine to the above
- CLASS 3: Conveyors, building hoists (single drum) scrapers and turntables, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch wiper type trencher, all loaders under 3-1/2 cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft lift, machines similar to the above
- GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power broom, seeding spreader, tireman (for power equipment), machines similar to the above
- GROUP 5: Fireman, grease track
- GROUP 6: Oilers and deck hands (personnel boats), core driller helper
- GROUP 7: All machines with booms (including jib, masts, leads, etc.): 100 ft and over
- GROUP 7A: 150 ft. and over
- GROUP 7B: 200 ft. and over

FOOTNOTES:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

ROOFERS (CONT'D) AREA COVERED BY ROOFERS ZONES

- ZONE - 1 East Penn, Franklin, Lower Townships, Mornings, and Townships in Carbon County, Remaford of Monroe County
- ZONE - 2 Remainder of Carbon County
- ZONE - 3 Tobyhanna Army Depot in Monroe County & Pike County in its entirety

ZONE	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vocafin	
ZONE - 1	\$10.08	.50	.50		.02
ZONE - 2	8.63	.35	.60		.03
ZONE - 3	10.61	.43	.50		.05
ZONE - 3	9.73	.41	.63		.02

AREA COVERED BY SOFT FLOOR LAYERS ZONES

- ZONE - 1 Carbon County
- ZONE - 2 Tobyhanna Army Depot in Monroe County, and Pike County in its entirety
- ZONE - 3 Remainder of Monroe County

ZONE	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vocafin	
ZONE - 1	11.61	.60	.90		.08
ZONE - 2	8.75	.60	1.05		
ZONE - 3	9.50	.50			

AREA COVERED BY TERRAZZO WORKERS

- ZONE - 1 Carbon County
- ZONE - 2 Monroe County, including Tobyhanna Army Depot & Pike County

ZONE	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vocafin	
ZONE - 1	8.75	.60	1.05		
ZONE - 2	9.50	.50			
ZONE - 3	9.70	.55	.30		

AREA COVERED BY TILE SETTERS ZONES

- ZONE - 1 Carbon County
- ZONE - 2 Tobyhanna Army Depot in Monroe County, and Pike County in its entirety
- ZONE - 3 Remainder of Monroe County

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W'	Pensions	Vocational	
<p><b>TRUCK DRIVERS</b></p> <p><b>Class I</b>                      Balper, Stake Truck (single axle), Dumpster</p> <p><b>Class II</b>                      Dump Trucks, Tandem &amp; batch trucks, semi-trailers, agitator mixer truck trucks, ready mix and concrete type vehicles, asphalt distributors, farm tractor when used for transportation stake body truck (tandem)</p> <p><b>Class III</b>                      Euclid type, off-highway equipment, back or belly dump trucks and double hitched equipment, straddle (ross) carrier, 10 low-bed trailers</p> <p>Welders - Recative rate prescribed for craft performing operation to which welding is incidental.</p>				
\$7.92				
7.99				
8.48				

**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. Paid Holidays: Independence Day and Labor Day
- b. .12 per day per employee.
- c. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
- d. Six paid holidays: A through F.
- e. Employer contributes \$2.05 to a combined Health and Welfare and Pension Fund.
- f. Nine paid holidays: A through F. Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer.
- g. Paid Holidays: Washington's birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans' Day; Thanksgiving Day & Christmas Day.

NOTICES

MODIFICATIONS P. 2

DECISION NO. AB77-4018 - Mod. #3  
(42 FR 7040 - February 4, 1977)  
Crawford, Sebastian and  
Washington Counties, Arkansas

CHANGE:  
BRICKLAYERS-STONEMASONS

DECISION NO. AB77-4061 - Mod. #2  
(42 FR 13723 - March 11, 1977)  
Conway, Cleburne, Faulkner, Van  
Buren and Perry Counties,  
Arkansas

CHANGE:  
BRICKLAYERS-STONEMASONS

CHANGE DESCRIPTION OF WORK TO READ "Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)."

Decision # FL77-1028 - Mod. # 1  
(42 FR-15262 - March 18, 1977).  
Alachua County, Florida

Change:  
Bricklayers

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
\$ 3.60				

DECISION #4176-5090 - Mod. #1  
(41 FR 44609 - October 8, 1976)  
Alabama, Arkansas, Florida  
(west of the Aucilla River),  
Kentucky, Louisiana, Mississippi,  
Missouri, Tennessee and Texas.

CHANGE:  
Dredges Under 16"  
Dredge Tender Operator

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
\$8.70	.40	.35		.04
\$5.70	.40	.35		.04
7.65	.30	.30		.03



MODIFICATIONS P. 4

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$9.32	.45	1%	b	1/2
6.06	.45	1%	b	1/2
6.24	.45	1%	b	1/2
7.46	.45	1%	b	1/2
5.13	.45	1%	b	1/2

DECISION NO. IA76-4146 - Mod. #4  
(41 FR 35713 - Sept. 10, 1976)  
Des Moines County (City of Burlington and abutting municipalities and Burlington Ordnance Plant), Iowa

Change:  
Building, Water Treatment Plants and Sewage Disposal Plants Constructions:  
Line Constructions:  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5

DECISION NO. IA76-4148 - Mod. #3  
(41 FR 38719 - Sept. 10, 1976)  
Johnson County (City of Johnson City and abutting municipalities), Iowa

Change:  
Line Constructions:  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5

MODIFICATIONS P. 3

DECISION #1077-5023 - Mod. #1  
(42 FR 11195 - February 25, 1977)  
Statewide Idaho

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$11.575	.775	\$1.00	.50	.02
9.75	.50	.50		
12.78	.45	1%	.10	1/2
11.54	.45	1%	.10	1/2
10.42	.45	1%	.10	1/2
9.95	.45	1%	.10	1/2
8.69	.45	1%	.10	1/2
8.18	.45	1%	.10	1/2
8.95	.50	.50		
8.95	.50	.50		

Change:  
Boilermakers  
Bricklayers; Stonemasons;  
Bannock, Bear Lake, Bingham County (south half), Caribou, Franklin, Oneida, Power Counties  
Line Construction Workers: (AREA 1):  
Beneish, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Percé, Shoshone Counties  
Cable Splicers; Leadman  
Fole Sprayer  
Lineman; Pole Sprayer;  
Heavy Line Equipment Man; Certified Lineman  
Welder  
Tree Trimmer  
Line Equipment Man  
Head Groundman (chipper); Head Groundman; Powderman; Jackhammer Man  
Groundman; Tree Trimmer  
Helper  
Marble Setters:  
Bannock, Bear Lake, Bingham County (south half), Caribou, Franklin, Oneida, Power Counties  
Terrazzo Workers & Tile Setters:  
Bannock, Bear Lake, Bingham County (south half), Caribou, Franklin, Oneida, Power Counties

MODIFICATIONS P. 6

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
DECISION NO. IA76-4173 - Mod. #3 (41 FR 45805 - Oct. 15, 1976) Story County (City of Ames and abetting municipalities), Iowa  Change: Building, Water Treatment Plants and Sewage Disposal Plants Construction: Line Construction: Group 1 Group 2 Group 3 Group 4 Group 5	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
DECISION NO. IA76-4174 - Mod. #4 (41 FR 45808 - Oct. 15, 1976) Webster County (City of Fort Dodge), Iowa  Change: Building, Water Treatment Plants and Sewage Disposal Plants Construction: Line Construction: Group 1 Group 2 Group 3 Group 4 Group 5	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2

MODIFICATIONS P. 5

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
DECISION NO. IA76-4149 - Mod. #4 (41 FR 38722 - Sept. 10, 1976) Linn County, Iowa  Change: Building, Water Treatment Plants and Sewage Disposal Plants Construction: Line Construction: Group 1 Group 2 Group 3 Group 4 Group 5	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
DECISION NO. IA76-4150 - Mod. #2 (41 FR 40393 - Sept. 17, 1976) Polk County, Iowa  Change: Building, Water Treatment Plants and Sewage Disposal Plants construction: Line Construction: Group 1 Group 2 Group 3 Group 4 Group 5	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2
	.45	11	b		1/2

MODIFICATIONS P. 8

Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
	H & W	Pensions	Vacation		
\$9.32	.45	1%	b	b	5%
6.06	.45	1%	b	b	5%
6.24	.45	1%	b	b	5%
7.46	.45	1%	b	b	5%
5.13	.45	1%	b	b	5%
10.14	.31	.50			.02

DECISION NO. IA77-4004 - Mod. #2  
(42 FR 4082 - Jan. 21, 1977)  
Cerro Gordo County (City of Mason City), Iowa

Change:  
Building, Water Treatment Plants and Sewage Disposal Plants Construction:  
Line Construction:  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5

Decision # MS77-1030 - Mod. # 1  
(42 FR-16356 - March 25, 1977)  
Bancroft, Harrison, Jackson, & Pearl River Counties, Mississippi.

Change:  
Plumbers & steamfitters

MODIFICATIONS P. 7

Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
	H & W	Pensions	Vacation		
\$9.32	.45	1%	b	b	5%
6.06	.45	1%	b	b	5%
6.24	.45	1%	b	b	5%
7.46	.45	1%	b	b	5%
5.13	.45	1%	b	b	5%
\$9.32	.45	1%	b	b	5%
6.06	.45	1%	b	b	5%
6.24	.45	1%	b	b	5%
7.46	.45	1%	b	b	5%
5.13	.45	1%	b	b	5%

DECISION NO. IA76-4175 - Mod. #3  
(41 FR 45811 - Oct. 15, 1976)  
Woodbury County (City of Sioux City and abutting municipalities), Iowa

Change:  
Line Construction:  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5

DECISION NO. IA76-4185 - Mod. #4  
(41 FR 51255 - Nov. 19, 1976)  
Pottawattomie County (City of Council Bluffs & the area within 3 miles from the City limits), Iowa

Change:  
Building Construction:  
Line Construction:  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5

DECISION #/Mod. #/Date (City/County, State)	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
DECISION #W76-3256 - Mod. #2 (41 FR 44645 - October 8, 1976) Bronx, Kings, Queens, New York and Richmond Counties, New York	\$ 8.62	1.13	1.33			
ADD: Rehabilitation of Residential Buildings over 4 stories in- cluding demolition, repair and alteration on existing structures which are intended for predominantly residential use: Bricklayers Carpenters, Soft Floor Layers Millwrights and Piledrivers Electricians and Linemen Mason Tenders Painters, Brush Plumbers, Manhattan and Bronx Roofers, Composition, Damp & Waterproofing	9.12 7.52 8.50 7.58	1.25 78 .79 3.47	.49 18+8 9		5.3658	.02 1/28
DECISION #W77-3022 - Mod. #1 (42 FR 7063 - February 4, 1977) Bronx, Kings, Queens, New York and Richmond Counties, New York	\$ 8.62	1.13	1.33			
ADD: Rehabilitation work on residential structures to include demolition, repair and alteration on existing structures which are intended for predominantly residential use: Bricklayers Carpenters, Soft Floor Layers Millwrights, and Piledrivers Electricians and Linemen Mason Tenders Painters, Brush Plumbers, Manhattan and Bronx Roofers, Composition, damp & Waterproofing	9.12 7.52 8.50 7.58	1.25 78 .79 3.47	.49 18 + 8 9		5.3658	.02 1/28

DECISION #/Mod. #/Date (City/County, State)	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
DECISION #W77-5022 - Mod. #1 (42 FR 15273 - March 18, 1977) Clark County (excluding the Ne- vada Test Site), Nevada	\$13.175	.775	\$1.00	.50		.02
Change: Boilermakers						
DECISION #W77-5031 - Mod. #1 (42 FR 15276 - March 18, 1977) Washoe County, Nevada	\$13.175	.775	\$1.00	.50		.02
Change: Boilermakers Electricians Washoe County excluding Lake Taboe Area: Electricians; Technicians Cable Splicers Lake Taboe Area: Electricians; Technicians Cable Splicers	12.33 14.56 13.33 14.56	.67 .67 .67 .67	18 + .77 18 + .77 18 + .77 18 + .77	.08 .08 .08 .08		.02 .08 .08 .08

MODIFICATIONS P. 12

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$11.72	.60	.95		.03
\$9.27	.50	.40		.02
9.02	.50	.60		.02
7.25	.47	.15		.25
7.70	.50	.30		.02

DECISION NO. 0877-2007 - Mod. #1  
(42 FR 13782 - March 11, 1977)  
Cuyahoga, Lake, Portage, Stark  
& Summit Counties, Ohio

Change:  
Ironworkers:  
Cuyahoga, Lake, Portage (ex-  
cluding Kavenna Ordnance  
Depot), & Summit Cos.

Add:  
Residential Construction:  
Bricklayers:  
Portage & Summit Cos.  
Cement masons:  
Portage, Stark, & Summit  
Cos.  
Electricians:  
Portage (Twp. of Atwater,  
Aurora, Brimfield, Deer-  
field, Franklin, Mantus,  
Sandolph, Ravenna, Root-  
town, Shelbyville, Streets-  
boro, & Suffield), &  
Summit Cos.  
Laborers:  
Portage & Summit Cos.

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$12.80	.65	14+1.00		.05
13.55	.65	14+1.00		.05
\$ 9.25	.35	.30		.08
10.79	.35	.72		
6.85		.20		
8.15	.18	.45		
7.025	.18	.45		
6.225	.18	.45		
6.375	.18	.45		

DECISION NO. 0877-5033 - Mod. #2  
(42 FR 16363 - March 25, 1977)  
Statewide, Oregon

Change:  
Electricians:  
Clackamas, Clatsop, Columbia  
Hood River, Multnomah,  
Shastan, Tillamook, Wasco,  
Washington, W of Yamhill  
Counties  
Electricians  
Lead Cable Splicers

DECISION #7476-4192 - Mod. #4  
(41 FR 55289 - December 17, 1976)  
Jefferson & Orange Cos., Texas

Change:  
Carpenters:  
Residential construction of  
not more than 2 units &  
condominium townhouses of  
not more than 10 units, ex-  
cluding all apartment con-  
struction & multiple build-  
ings for rental purposes  
Pipefitters

DECISION #7476-4193 - Mod. #4  
(41 FR 55536 - December 28, 1976)  
See, Kleberg & Nueces Cos., Texas

Change:  
Glassers  
Power Equipment Operators:  
Group 1  
Group 2  
Group 3  
Group 4

MODIFICATIONS P. 11

MODIFICATIONS P. 14

DECISION NO. DC77-3040.  
Mod. # 1

(EXCLUDING MWATA - RAPID RAIL TRANSIT SYSTEM)

PAVING AND INCIDENTAL GRADING

Basic Hourly Rates	H & V	Fringe Benefits Payments		App. Tr.
		Penalties	Vacation	
\$6.70	.27			
Asphalt Shovel				
Asphalt Baker	.27	.35		
Asphalt Tamper	.27	.35		
Bricklayers	.75	.65		.10
Carpenters	.55	.53		.05
Cement Masons	.75	.35		
Concrete Saw Operator	.27	.35		
Concrete Shovel	.27	.35		
Form Setter	.27	.35		
Laborers:				
Laborers	.65	.27	.35	
Jackhammer	.65	.27	.35	
Hand Burner Operator	.65	.27	.35	
Power Equipment Operators:				
Concrete Spreader Operator,				
Finishing Machine, Roller				
(trough), Compressor, Rubber-tired				
Loader (1-1/2 cu. yds., or less),				
Asphalt Plant Mixer		.35		
Loader Operator Tracks (2-1/2 cu.				
yds. or less), Burner Planer,				
Bulldozer, Mechanic or Welder,				
Rubber Tired Loader (over 1-1/2 cu.				
yds.)	.27			
Asphalt Spreader, Hydraulic Back-				
hoe (1/2 cu. yd., or less), Asphalt				
Plant Engineer, Asphalt Roller				
Operator, Concrete Breaker				
(machine)		.35		
Craze Operator, Concrete Paving				
Operator	.27	.35		
Shovel Operator	.27	.35		
Gradall Operator (1-1/2 cu. yds. or				
less), Motor Grader, Loader				
Operator Tracks (over 2-1/2 cu. yds.)				
G-1000 Gradall Operator (over 1/2				
cu. yds.)	.27	.35		
Power Broom, Oiler	.27	.35		
Sand Setter	.27	.35		
Truck Drivers:				
Truck Drivers (standard)	.27	.35		
Tandem	.27	.35		
Tractor trailer (capable of moving				
heavy equipment)	.27	.35		

MODIFICATIONS P. 13

DECISION #DC77-3041 - Mod. # 1  
(42 FR - 15168 - March 18, 1977)

Montgomery and Prince Georges Counties, Maryland; Arlington County, Virginia; D. C. Training School, and for MWATA - Rapid Rail Transit System Projects Only, Alexandria Virginia

Change:  
Elevator Constructors  
Elevator Constructors Helpers  
Elevator Constructors Helpers (Prob.)

Reading in FR - 15269, to read: (Building Construction (Including MWATA))

Footnotes for truck drivers to read: (e+f)

DECISION NO. DC77-5032 - Mod. #1  
(April 1, 1977)  
Statewide, Washington

Change:  
Electricians:  
Clark, Klickitat, and Skamania Counties

Electricians  
Lead Cable Splicers

DECISION #DC77-3040 - Mod. # 1  
(42 FR - 15283 - March 18, 1977)  
Washington, D. C.

Change:  
Elevator Constructors  
Elevator Constructors Helpers  
Elevator Constructors Helpers (Prob.)

PAVING AND INCIDENTAL GRADING.  
(SEE SCHEDULE BELOW)

Footnotes for truck drivers to read e + f

Basic Hourly Rates	H & V	Fringe Benefits Payments		Education and/or Appr. Tr.
		Penalties	Vacation	
\$11.235 70% of JE 50% of JE	.545	.35	43+44	.02
\$12.80 13.55	.65 .65	14+1.00 14+1.00		.05 .05
\$11.235 70% of JE 50% of JE	.545 .545	.35 .35	43+44 43+44	.02 .02

MODIFICATIONS P. 16

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation	Education and/or Appr. Tr.	
DECISION NO. WI76-2160 - Mod. #1 (41 FR 55297 - December 17, 1976) Brown, Door, Kewaunee & Oconto Counties, Wisconsin Change: Asbestos Workers \$10.06 Sheet Metal Workers 9.47	.60 .51		.65+c .90		.05 .02
DECISION NO. WI76-2161 - Mod. #1 (41 FR 55299 - December 17, 1976) Columbia, Dane, Iowa & Sauk Counties, Wisconsin Change: Millwrights & Piledrifivermen 9.77 Add: Sheet Metal Workers 10.54	.30 .60		.40 .35		.03
DECISION NO. WI76-2163 - Mod. #1 (41 FR 54152 - December 10, 1976) Green & Rock Counties, Wisconsin Change: Electricians \$10.70 Plumbers 10.76 Sheet Metal Workers 10.49	.45 .50 .60		78+d .35 .44		.58 .06 .02
DECISION NO. WI76-2164 - Mod. #1 (41 FR 54154 - December 10, 1976) Green Lake, Marquette, Waupaca, Waushara & Winnebago Counties, Wisconsin Change: Electricians \$10.43 Plumbers & Steamfitters \$ 9.13 Remainder of County 9.47 Sheet Metal Workers	.60 .50 .51		.18 .90 .33		.03

MODIFICATIONS P. 15

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation	Education and/or Appr. Tr.	
DECISION NO. WI76-2155 - Mod. #1 (41 FR 52289 - November 26, 1976) La Crosse, Monroe & Vernon Counties, Wisconsin Change: Electricians \$10.40	.55	.18			
DECISION NO. WI76-2156 - Mod. #1 (41 FR 55295 - December 17, 1976) Barron, Dunn, Polk & St. Croix Counties, Wisconsin Change: From Laborers Western 1/2 of County Eastern 1/2 of County To Lathers Western 1/2 of County (Polk and St. Croix) Eastern 1/2 of County (Polk and St. Croix) Plasterers 9.30 9.19	.50 .55	.40 .25	.81		.08 .04
DECISION NO. WI76-2157 - Mod. #1 (41 FR 55292 - December 17, 1976) Ashland, Bayfield & Douglas Counties, Wisconsin Change: Plumbers \$ 9.51	.30	.75	1.00		.05

STATE: Arkansas  
 COUNTY: Pulaski  
 DATE: Date of Publication  
 DECISION NO.: AR77-4078  
 SUPERSEDES DECISION NO. AR76-1188 dated November 19, 1976 in 41 FR 51153  
 DESCRIPTION OF WORK: Building Construction, (does not include single family homes and garden type apartments up to and including four stories)

LABORERS CLASSIFICATION DEFINITIONS (CONT'D)

Group III - Steelform setters, curb and gutters, grout and cement muckers  
 Group IV - Scaffolding scaffold, Barco, 90 lb pavement breaker, and burners

Group V - Nozzlemans (gunite, Grout and sand blaster); concrete pump (nozzle placer)  
 Group VI - Fowderman and blasterers  
 Group VII - Wagon drill

	Fringe Benefits Payments				Education and/or App. Tr.
	Basic Hourly Rates	H & W	Pensions	Vocetion	
ASBESTOS WORKERS	\$10.10	.40	.50		.02
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS - STONEMASONS	8.70	.40	.35		.06
CARPENTERS:					
Carpenters	8.23	.45	.35		.04
Millwrights & Pile-drivers	8.73	.45	.35		.04
CEMENT MASONS:	8.27	.25			.03
ELECTRICIANS:					
Electricians	10.45	.40	11		1/4%
Cable splicers	10.575	.40	11		1/4%
ELEVATOR CONSTRUCTORS:					
Journymen	8.88	.545	.35	4%+a+b	.02
Helpers	7.01R	.545	.35	4%+a+b	.02
Helpers -- Probationary	5.01R				
GLAZIERS	7.60	.45	.25		.06
IRONWORKERS:					
Group I	9.06	.45	.40		.06
Group II	5.82	.25	.35		.04
Group III	6.07	.25	.35		.04
Group IV	6.22	.25	.35		.04
Group V	6.32	.25	.35		.04
Group VI	6.47	.25	.35		.04
Group VII	6.72	.25	.35		.04
Group VIII	6.62	.25	.35		.04

LABORERS CLASSIFICATION DEFINITIONS

Group I - Construction laborers, concrete labor, wrecking labor mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe, and concrete pump hose placer.

Group II - Semi-skilled laborer; pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rollers and shovelers, creosote wood handiers, chuck tender

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vocetion	
LATHERS	\$ 8.60				.02
LINE CONSTRUCTION:					
Linemen	10.85		11		3/8%
Cable splicers	10.975		11		3/8%
Operator	10.85		11		3/8%
Groundmen (advanced)	651R		11		3/8%
Groundmen (1st 6 months)	491R		11		3/8%
Winch equipment	731R		11		3/8%
MARBLE, TILE & TERRAZZO WORKERS	7.40				
PAINTERS:					
Painters, paperhangers and steam cleaners, sheet rock finishers and wall cover hangers	7.65	.30			
Spray gun operators and sand blasterers	8.25	.30			
All skelton steel and all work on stages, structural steel over 30 feet high	7.90	.30			.02
PLASTERERS	8.60				
PLUMBERS & PIPEFITTERS:					
Within 10 mile radius of Pulaski County Courthouse	9.85	.45	.55		.02
Over 10 miles from Pulaski County Courthouse	10.13	.45	.55	.0	.02
Marble, tile & terrazzo helpers	5.33				



**POWER EQUIPMENT OPERATORS:**

- Group I
- Group II
- Group III
- Group IV

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacations	
9.20	.35	.35	.35	
8.36	.35	.35	.35	
7.98	.35	.35	.35	
6.60	.35	.35	.35	

**POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS**

**Group I -** Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 ft. or over from the ground, blacksmith, mechanics and/or welders.

**Group II -** Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size.

**Group III - HEAVY EQUIPMENT OPERATORS:** All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pall scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, all central mixing plants, 10S and larger, finishing machines, all boiler fireman high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

**Group IV - LIGHT EQUIPMENT OPERATORS:** Oilier driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, and Dump Ecolid, concrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, mechanic helper, drilling machine helper, asphalt distributor, and like equipment, safety boat operator and deckhand.

- ROOFERS
- SHEET METAL WORKERS
- SPRINKLER FITTERS

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacations	
\$7.60		.10		.02
9.65	.40	.40		.05
9.57	.60	.90		

WELDERS --receive rate prescribed for craft performing operation to which welding is incidental.

**FOOTNOTES:**

- a - 1st 6 mos. - none; 6 mos. to 5 years - 2%; over 5 years - 4% of basic hourly rate.
- b - Paid Holidays - A through F

**PAID HOLIDAYS:**

- A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanks-giving Day; F-Christmas Day.

STATE: Arkansas  
 COUNTY: Union and Osage  
 DATE: Date of Publication  
 SUPERSEDES Decision No. AR76-4129 dated July 23, 1976 in 41 FR 30507  
 DESCRIPTION OF WORK: Building Construction. (Does not include single family homes and garden type apartments up to and including 4 stories)

LINE CONSTRUCTION:

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacations	
Electrical contracts \$10,000 or less:					
Lineman	\$ 9.64		1%		1/4%
Operator	9.39		1%		1/4%
Truck driver (pick-up & jeep)	8.54		1%		1/4%
Groundman	8.54		1%		1/4%
Electrical contracts over \$20,000.00:					
Lineman	10.43		1%		1/4%
Operator	10.18		1%		1/4%
Truck driver (pick-up & jeep)	9.18		1%		1/4%
Groundman	9.18		1%		1/4%
PAINTERS:					
Brush, roller, sheet rock work and paperhanging	8.00				
Spray painting & sandblasting	8.625				
PLASTERERS	7.80				
PLUMBERS & PIPEFITTERS	9.40	.45	.55		.02
POWER EQUIPMENT OPERATORS:					.05
Group I	9.20	.35	.35		
Group II	8.36	.35	.35		
Group III	7.98	.35	.35		
Group IV	6.60	.35	.35		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics and/or welders

Group II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP I - Constructing laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blower, and concrete pump hose placer

GROUP II - Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt takers & shovelers, creosote wood handlers, check tenders

GROUP III - Steel form setters, curb and gutters, grout and cement muckers

GROUP IV - Swinging scaffold, Barco, 90 lb. pavement breaker, and burners

GROUP V - Kozileman (Gumite, Groat and sand blaster; concrete pump (nozzle placer)

GROUP VI - Fooderman and blasters

GROUP VII - Wagon drill

LABORERS CLASSIFICATION DEFINITIONS

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$10.10	.40	.50		.02
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS	8.70	.40	.35		.02
CARPENTERS:					
Carpenters	7.63	.40	.30		.04
Millwrights & Filledrivemen	8.13	.40	.30		.04
CEMENT MASONS	8.27	.25			.03
ELECTRICIANS:					
Electrical contracts \$20,000 or less:					
Electricians	9.64		1%		1/4%
Cable splicers	9.94		1%		1/4%
Electrical contracts over \$20,000:					
Electricians	10.43		1%		1/4%
Cable splicers	10.73		1%		1/4%
IRONWORKERS	9.70	.40	.50		.04
LABORERS:					
Group I	5.82	.25	.35		
Group II	6.07	.25	.35		
Group III	6.22	.25	.35		
Group IV	6.32	.25	.35		
Group V	6.62	.25	.35		
Group VI	6.72	.25	.35		
Group VII	6.57	.25	.35		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 105, and dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, mechanic helper, drilling machine helper, asphalt distributor, and like equipment, safety boat operator and deckhand

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
ROOFERS	\$7.60		.10			
SHEET METAL WORKERS	9.65	3%+.40a	.25			.07b
SPRINKLER FITTERS	9.87	.60	.90			.08

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

- a - Includes 3% Sasmil
- b - Includes .02 National Training Fund.

STATE: Arkansas  
 COUNTY: Garland, Hot Springs & Clark  
 DATE: Date of Publication  
 SUPERSEDES Decision No. AR76-4133 dated July 13, 1976 in 41 FR 30513-  
 DESCRIPTION OF WORK: Building Construction (but does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			Education Appr. Tr.
		H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$10.10	.40	.50		.02
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS-SOOMASSONS	8.15	.40	.35		.04
CARPENTERS:					
Garland County and Northern 2/3 of Hot Springs County					
Carpenters	8.05	.40	.30		.05
Millwrights	8.55	.40	.30		.05
Piledrivers	8.55	.40	.30		.05
Remainder of Hot Springs County					
Carpenters with rights	7.63	.40	.30		.04
Millwrights	8.13	.40	.30		.04
Piledrivers	8.13	.40	.30		.04
CEMENT MASONS	8.27	.45			.03
ELECTRICIANS:					
Electricians	9.975		11		1/41
Cable splicers	10.10		11		1/41
ELEVATOR CONSTRUCTORS:					
Journeyman	8.88	.545	.35	45+45	.02
Helpers	70LR	.545	.35	45+45	.02
Helpers - probationary					
IRONWORKERS	9.06	.45	.40		.04
LABORERS:					
Group I	5.82	.25	.35		.04
Group II	6.07	.25	.35		.04
Group III	6.22	.25	.35		.04
Group IV	6.32	.25	.35		.04
Group V	6.47	.25	.35		.04
Group VI	6.72	.25	.35		.04
Group VII	6.62	.25	.35		.04

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe, and concrete pump hose placer  
 GROUP II - Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers & shovelers, creosote wood handlers, chuck tenders  
 GROUP III - Steel form setters, curb and gutters, grot and cement muckers  
 GROUP IV - Swinging scaffold, Barco, 90 lb. pavement breaker, and burners  
 GROUP V - Workman (Gnite, Grot and sand blaster; concrete pump (nozzle placer)  
 GROUP VI - Fowlerman and blasters  
 GROUP VII - Wagon drill

	Basic Hourly Rates	Fringe Benefits Payments			Education Appr. Tr.
		H & W	Pensions	Vacation	
LATHERS	\$8.60				.02
PAINTERS:					
Brush and roller	6.50				
Paperhanging	6.75				
Sheet rock (tape & float only); stage and steel	6.75				
Spray and sandblasting	7.00				
Painters operating any kind of taping or floating machine	8.50				
PLASTERERS	8.60	.50	.30		.02
PLUMBERS-STEAMFITTERS	8.75				.10
POWER EQUIPMENT OPERATORS					
Group I	9.20	.35	.35		
Group II	8.36	.35	.35		
Group III	7.98	.35	.35		
Group IV	6.60	.35	.35		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group I - Cranes, derricklines, sheaves and piledrivers with a lifting capacity of 50 tons or over, and operation of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, and all derricks and/or welders  
 Group II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size  
 GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skidsteers, all push tractors, all pail scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers all central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oiler/driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, single drum A-frame trucks, forklifts, rollers of all types and pall tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, Lad-A-Wator, conveyor, batch plant, and mortar or concrete mixers, below 105, and dump Euclid, pump-crete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, mechanic helper, drilling machine helper, asphalt distributor, and like equipment, safety boat operator and deckhand

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
<b>LINE CONSTRUCTION</b>					
Linemen	\$9.975		1%		1/4%
Cable splicers	10.10		1%		1/4%
Groundman 1st 6 months	4.5/LR		1%		1/4%
Truck Drivers (with winch)	80/LR		1%		1/4%
Truck Driver (flat bed)	64/LR		1%		1/4%
ROOFERS	7.60		.10		
SHEET METAL WORKERS	9.35	.40	.40		.02
SPRINKLER FITTERS	9.87	.60	.50		.03
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:

a. 1st 6 mos. - none; 6 mos. to 3 yrs. - 1%; over 3 yrs. - 4% of basic hourly rate.

b. PAID HOLIDAYS - A through F

PAID HOLIDAYS:

A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

SUPERSEDES DECISION

Decision #IL77-5038 (Cont'd.)

Page 2

STATES: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

DECISION NUMBER: IL77-5038  
 Supersedes Decision No. IL76-5038 dated April 16, 1976 in 41 FR 16373  
 DESCRIPTION OF WORK: Dredging on the Great Lakes, their connecting and tributary waters, including the Illinois Waterway to the lock at Lockport, Illinois; and in the New York State Canal System between Tonawanda, New York, and Waterford, New York, and Oswego, New York and on the St. Lawrence River eastward to the International Boundary near St. Regis, New York.

Dipper and Hydraulic Dredging:  
 Chief Engineer  
 Operators  
 Assistant Engineer  
 Welder  
 Craneмен - Dipper Dredging  
 Spill Barge Operator - Hydraulic Dredging  
 Drill Boats:  
 Engineers  
 Blasters  
 Firemen  
 Drillers, Welders or Machinists  
 Oilers  
 Tug Engineers  
 Tug Operators - on Launch  
 Floating Equipment:  
 (Clanshell, Dragline and Marine Construction)  
 Engineers and Operators  
 Equipment Operators  
 Firemen  
 Oilers  
 Tug Workers:  
 Firemen, Linsmen, Oilers, Deckhands, Scaemen (on/or with tugboats; launches or other self-propelled boats)  
 Dredge Workers:  
 Firemen, Oiler, Deckhands and Scaemen (with dipper dredges, hydraulic dredges or other floating equipment engaged in dredging operations); Pipeline men (both afloat and ashore, including loading, unloading, installing, maintaining and handling pipe lines for hydraulic dredges and sandboats)  
 Range and Sweepmen, Service Truck Drivers

	Fringe Benefits Payments				
	Basic Hourly Rates	M & V	Pensions	Vacation	Education and/or Appl. Tr.
	\$13.50	.35	.35	a	
	13.40	.35	.35	a	
	12.95	.35	.35	a	
	12.85	.35	.35	a	
	12.85	.35	.35	a	
	12.85	.35	.35	a	
	9.62	.35	.35	c	
	9.75	.35	.35	c	
	9.24	.35	.35	c	
	9.63	.35	.35	c	
	9.04	.35	.35	c	
	12.05	.65	.65	a	
	11.70	.65	.65	a	
	12.00	f		d e e	
	11.50	f		d e e	
	10.90	f		d e e	
	9.75	f		d e e	
	11.00	b	.50	a	
	11.00	b	.50	a	
	8.25	b	.50	a	

FOOTNOTES:

- a. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day; 6 1/2 days vacation with pay for 10 1/2 days of service, one additional day of vacation with pay for each of the next 3 periods of 26 days of service, and for 208 days or over of service 13 days of vacation with pay, all in one calendar year. Employees not qualifying for vacation, as set forth above, will receive one day's vacation with pay for each full 24 days of service in one calendar year.
- b. \$5.00 per day, per employee.
- c. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day; 6 1/2 days vacation with pay for 10 1/2 days of service, one additional day of vacation with pay for each additional 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation, as set forth above, are to receive one day's vacation with pay for each full 20 days of service in one calendar year.
- d. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day.
- e. 1/2 day vacation for each full 12 days employment in one calendar year.
- f. \$1.65 per hour in fringe benefits (excluding vacation payments).

PAID HOLIDAYS (where Applicable):

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

SUPERSEDES DECISION

STATE: Kansas  
 COUNTY: Shawnee  
 DATE: Date of Publication  
 DECISION NO.: KS77-4079  
 Supersedes Decision No. KS77-4048, dated February 25, 1977 in in 42 FR 11216  
 DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

CLASSIFICATION DEFINITIONS

LABORERS (Site Preparation and Grading):

- Group 1 - Board mat weavers and cable tiers; Georgia buggy (manually operated); mixerman - no skip; lift; nailers, sailmaster tenders; track men; tractor swamps; truck dumper; wire mesh setter, water pump up to 4 inches; and all other General Laborer including flagman
- Group 2 - Air tool operators, cement handlers (bulk), chain saw, Georgia buggy (mechanically operated); grade man, hot mastic kettlemen, crusher feeder, joint man, jute man; mason tender; material batch hopper and scale man; mixer man; pier hole man working 10 ft. deep; pipe layer-drainage (concrete and/or corrugated metal); signal man (crane), truck dumper-dry batch; vibrator operator; wagon and churn drill operator
- Group 3 - Asphalt raker, barco tamper; concrete saw; cresosote material-handling and applying; nozzle burner (cutting torch and burning bar)
- Group 4 - Conduit pipe; tile and duct line setter; form setter and liner on concrete paving; powderman; sandblasting and gunite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution lines
- Group 5 - Leadman or pusher

	Fringe Benefits Payments				Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacations	
ASBESTOS WORKERS	\$11.52	.50	.80	.02	.02
SOILREMAKERS	10.30	.85	1.00	.02	.02
BRICKLAYERS: Stonemasons	9.89	.40	.25		
CARPENTERS:					
Carpenters	9.00	.40	.25	.05	.05
Millwrights; Piledrivermen	9.375	.40	.25	.05	.05
CEMENT MASONS:					
Cement masons	8.85	.40	.35		
Machine operators	8.975	.40	.35		
Composition color or chloride additives	9.05	.40	.35		
ELECTRICIANS	6.60	.45	1.20	.05	.05
IRONWORKERS	9.60	.70	1.00	1.00	.05
LABORERS (Building Construction)					
General laborer	7.65	.40	.35		.10
Power tool operators, compactor, concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated, Georgia buggy	7.85	.40	.35		.05
Mason tenders, plaster tenders, mortar mixers for plaster masons and cement finishers, all stocking scaffold, clean up for masons (building and wrecking)	7.95	.40	.35		.05
Sand and concrete gun nozzleman and powderman	8.05	.40	.35		.05
LABORERS (Site Preparation and Grading):					
Group 1	6.80	.40	.35		.05
Group 2	6.95	.40	.35		.05
Group 3	7.05	.40	.35		.05
Group 4	7.20	.40	.35		.05
Group 5	7.30	.40	.35		.05

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
LATHERS	9.70		.20		
PAINTERS:					
Brush, drywall, sanding and taping, roller	9.90	.45			.02
Painting of structures over 50' (all types); spray	10.40	.45			.02
PLASTERERS	9.25		.20		
PLUMBERS: Pipefitters	10.90	.40	.55		.02
POWER EQUIPMENT OPERATORS: (Building Construction):					
Group 1	10.10	.50	1.00	.50	.10
Group 2	9.70	.50	1.00	.50	.10
Group 3:					
(a)	8.65	.50	1.00	.50	.10
(b)	8.90	.50	1.00	.50	.10
Group 4:					
(a)	8.10	.50	1.00	.50	.10
(b)	8.35	.50	1.00	.50	.10
Group 5	10.60	.50	1.00	.50	.10
Group 6	10.35	.50	1.00	.50	.10
Group 7	10.60	.50	1.00	.50	.10
Group 8	11.10	.50	1.00	.50	.10
Group 9	12.10	.50	1.00	.50	.10

DECISION NO. ES77-4079

POWER EQUIPMENT OPERATORS (Building Construction)

CLASSIFICATION DEFINITIONS

Group 1 - Boilers (2); boom cat, boring machine, ditching machine, concrete ready-mix plant; crane, truck crane, clamshell, dragline, dozer, scraper, all types, patrol, fireman (when operating steam or air valve); gradall, hi-loaders (over 1 yd); hoist, two; locomotive; mechanic or welder; mixer-mobile; paver, or any other machine with power swing; piledriver operator; power shovel; pump, concrete or other material

Group 2 - A-frame truck; barber grease loader or similar type; bob cat hi-loaders (1 yd. and under); boiler (1); ditching machine-small; elevator operator; fireman; fork lift; greaser, equipment; hoist, one active drum; hydra hammer; jeep ditcher; mixer, other than paver; power broom, pump, 4" or larger, small machine engine; welding machine (1)

Group 3 - (a) Farm tractor (without attachments)  
(b) Farm tractor (with attachments)

Group 4 - (a) Oiler  
(b) Motor crane oiler

Group 5 - Tower cranes and derricks; franki-type piledriving machines; (4) drum hoist

Group 6 - Crane & shovels 100 ft of boom or over (including jib) or 2 yds capacity or over- or 30 tons or over; (3) drum hoist

Group 7 - Crane & shovels booms 200 ft and over

Group 8 - Cranes with lifting ring

Group 9 - Master mechanic

Moist each additional drum over two - an additional .25c

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
Group 1	8.35	.50	1.00	.50	.10
Group 2	8.10	.50	1.00	.50	.10
Group 3	7.85	.50	1.00	.50	.10
Group 4	7.50	.50	1.00	.50	.10
Group 5	7.60	.50	1.00	.50	.10
Group 6	8.60	.50	1.00	.50	.10

POWER EQUIPMENT OPERATORS  
Site Preparation and Grading

Group 1  
Group 2  
Group 3  
Group 4  
Group 5  
Group 6

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
ROOFERS: Roofers flat, slate and tile, dampproofers and waterproofers Roofers working in pitch, tar or creosote, coal	9.36	.30	.60		
SHEET METAL WORKERS SOFT FLOOR LAYERS SPRINKLER FITTERS	10.21	.30	.60	.78	.04
TILE SETTERS	8.88	37.4.35	1.10	10%	.08
	8.26	.45	.90		
	11.23	.60	.90		
	8.50				

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS (Site Preparation and Grading)

Group 1 - Asphalt paver and spreader, backhoe; boring machine, blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader, all types, mechanic or welder; mixer-mobile; multi-mat scraper; pile driver operator; power shovel operator; quad track; scoop operator, all types; side boom cat-cherry picket; skimmer scoop operator; pushcat operator

Group 2 - Asphalt plant operator; elevating grader operator

Group 3 - A-frame truck; asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber grease loader; boiler - other than asphalt; bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator, distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist 1 drum; jeep ditching machine; pavement breaker, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredge; screening and wash plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphon and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; tombato operators; vibrating machine operator, not hand

Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc seeder; oiler; tractor operator, 50 h.p. or less without attachments

Group 5 - Oiler, motor crane

Group 6 - Master mechanic



DECISION NO. KS77-4079

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		M & W	Pensions	Vocational	
TRUCK DRIVERS (Building Construction)					
Light, pickups, station wagons	7.875	.40	.35		
Medium flat beds and dumps, 5 tons or less; warehousemen and partsmen	7.975	.40	.35		
Truck over 5 tons and semi-trailers	8.225	.40	.35		
TRUCK DRIVERS (Site Preparation and Grading)					
Group 1	6.90	.40	.35		
Group 2	7.00	.40	.35		
Group 3	7.15	.40	.35		

## CLASSIFICATION DEFINITIONS

## TRUCK DRIVERS:

Group 1 - Pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen

Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tounarockets; abkeys; dumpers and similar off-road equipment and mechanics on such equipment

WELDERS: Receive rates prescribed for craft performing operation to which welding is incidental.

DECISION NO. KS77-4080

STATE: Kansas  
 COUNTY: Shawnee  
 DATE: Date of Publication  
 SUPERSEDES Decision No. KS77-4046 dated February 25, 1977 in 42 FR 11213  
 DESCRIPTION OF WORK: Building construction. (Does not include single family homes and garden type apartments up to and including 4 stories)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
6.80	.40	.35		.05
6.95	.40	.35		.05
7.05	.40	.35		.05
7.20	.40	.35		.05
7.30	.40	.35		.05

LABORERS: (Site Preparation and Grading)

- Group 1
- Group 2
- Group 3
- Group 4
- Group 5

CLASSIFICATION DEFINITIONS

- LABORERS:
- Group 1 - Board mat weavers and cable tiers; Georgia buggy (manually operated); mixerman - no skip; lift; sailers, salamander tenders; track men; tractor swapper; truck dumper, wire mesh setter, water pump up to 4 inches; and all other general laborer including flagman
  - Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically operated); grade man, hot mastic kettlemen, crusher feeder, joint man, jute man; mason tender; material batch hopper and scale man; mixer man; pier hole man working 10 ft. deep; pipelayer-drainage (concrete and/or corrugated metal); signal man (crane), truck dumper-dry batch; vibrator operator; wagon and churn drill operator
  - Group 3 - Asphalt raker, barco tamper; concrete saw; creosote material-handling and applying; mozzle burner (cutting torch and burning bar)
  - Group 4 - Conduit pipe; tile and duct line setter; form setter and liner on concrete paving; powderman; sandblasting and gumite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution lines
  - Group 5 - Leadman or pusher

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$11.52	.50	.80		.02
BUILDERS	10.30	.85	1.00		.02
BRICKLAYERS; Stonemasons	9.89	.40	.25		
CARPENTERS	9.00	.40	.25		.05
Millwrights; Piledrivermen	9.375	.40	.25		.05
CEMENT MASONS	8.85	.40	.35		
Mechanicians	8.975	.40	.35		
Composition color or chloride additives	9.05	.40	.35		
ELECTRICIANS	11.35	.45	15+.55		.05
Cable splicers	12.485	.45	15+.55		.05
ELEVATOR CONSTRUCTORS	8.74	.445	.29	3%+4b	.02
ELEVATOR CONSTRUCTORS-HELPERS	7.01R	.445	.29	3%+4b	.02
ELEVATOR CONSTRUCTORS-HELPERS (PROB.)	5.01R				
FOOTNOTES: - a-Employer contributes 4% of basic hourly rate for over 5 years of service and 2% of basic hourly rate for 6 months to 5 years service as vacation Pay Credit. b-list 6 months-none; 6 months-5 years 2%; over 5 years 4% of basic hourly rate; also 6 paid holidays.					
GLAZIERS	9.325	.55	.51	1.663%+6.99+.03	
IRONWORKERS	9.60	.70	1.60	1.00	.05
LABORERS (Building Construction):	7.65	.40	.35		.05
General laborers					
Power tool operators, compactors, concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy					
Mason tenders, plaster tenders, mortar mixers for masons and cement finishers, all stocking scaffold, clean up for masons (building and wrecking)					
Sand and concrete gun nozzleman and powderman	7.85	.40	.35		.05
	7.95	.40	.35		.05
	8.05	.40	.35		.05

POWER EQUIPMENT OPERATORS (Building Construction)

CLASSIFICATION DEFINITIONS

Group 1 - Boilers (2); boom cat, boring machine, ditching machine, concrete ready-mix plant; crane, truck crane, clamshell, dragline, dozer, scraper, all types, patrol, fireman (when operating steam or air valve); gradall hi-loaders (over 1 yd); hoist, two; locomotive; mechanic or welder; mixer-moblie; paver, or any other machine with power swing; piledriver operator; power shovel; pump, concrete or other material

Group 2 - A-frame truck; barber greese loader or similar type; bob cat loaders (1 yd. and under); boiler (1); ditching machine-small; elevator operator; fireman; fork lift; greaser, equipment; hoist, one active drum; hydra hammer; jump ditcher; mixer, other than paver; power broom, pump, 4" or larger, small machine engine; welding machine (1)

Group 3 - (a) Farm tractor (without attachments)  
(b) Farm tractor (with attachments)

Group 4 - (a) Oiler  
(b) Motor crane oiler

Group 5 - Tower cranes and derricks; franki-type piledriving machines; (a) drum hoist

Group 6 - Crane & shovels 100 ft of boom or over (including jib) or 2 yds capacity or over or 30 tons or over; (3) drum hoist

Group 7 - Crane & shovels booms 200 ft and over

Group 8 - Cranes with lifting ring

Group 9 - Master mechanic

Hoist each additional drum over two - an additional .25¢

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
LATHERS	9.70		.20		
LINE CONSTRUCTION:					
Lineman	9.25	.45	1¢		3¢
Cable splicers	9.71	.45	1¢		3¢
Groundman, over 1 year	5.75	.45	1¢		3¢
Groundman, 1st year	4.36	.45	1¢		3¢
Foreman	7.67	.45	1¢		3¢
Line Truck and Equipment Operators:					
1st year	5.89	.45	1¢		3¢
2nd year	7.05	.45	1¢		3¢
Over 2 years' experience	7.67	.45	1¢		3¢
PAINTERS:					
Brush, drywall, sanding and taping	9.90	.45			.02
Painting of structures over 50' (all types); spray	10.60	.45	.20		.02
FLASTERS	9.25				
PIPEFITTERS; Plumbers	10.90	.40	.55		.02
POWER EQUIPMENT OPERATORS (Building Construction):					
Group 1	10.10	.50	1.00	.50	.10
Group 2	9.70	.50	1.00	.50	.10
Group 3:					
(a)	8.65	.50	1.00	.50	.10
(b)	8.90	.50	1.00	.50	.10
Group 4:					
(a)	8.10	.50	1.00	.50	.10
(b)	8.35	.50	1.00	.50	.10
Group 5	10.60	.50	1.00	.50	.10
Group 6	10.35	.50	1.00	.50	.10
Group 7	10.60	.50	1.00	.50	.10
Group 8	11.10	.50	1.00	.50	.10
Group 9	12.10	.50	1.00	.50	.10

DECISION NO. KS77-4080

	Fringe Benefits Payments				Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacation	
POWER EQUIPMENT OPERATORS (Site Preparation and Grading)					
Group 1	8.35	.50	1.00	.50	.10
Group 2	8.10	.50	1.00	.50	.10
Group 3	7.85	.50	1.00	.50	.10
Group 4	7.50	.50	1.00	.50	.10
Group 5	7.60	.50	1.00	.50	.10
Group 6	8.60	.50	1.00	.50	.10

POWER EQUIPMENT OPERATORS (Site Preparation and Grading)

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS:

Group 1 - Asphalt paver and spreader, backhoe; boring machine, blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dore; ditching machine; euclid loader; hoist - active drums; loader, all types, mechanic or welder; mixer-mobile; multi-mit scraper; pile driver operator; power shovel operator; quad track; scoop operator, all types; side boom cat-cherry picker; skimmer scoop operator; subcat operator

Group 2 - Asphalt plant operator; elevating grader operator

Group 3 - A-frame truck; asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber grease loader; boiler - other than asphalt; bull float operator; churn drill operator; compressor operator (l); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator, distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form trader operator; greaser/hoist 1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer of similar type); pump operator, 4" or over, box pump operator, other than dredge; screening and wash plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphon and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operator; vibrating machine operator, not hand

Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc seeder; oiler; tractor operator, 50 h.p. or less without attachments

Group 5 - Oiler, motor crane

Group 6 - Master mechanic

DECISION NO. KS77-4080

	Fringe Benefits Payments				Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	Vacation	
ROOFERS, FLAT, SLATE & TILE DAMPROOFERS AND WATERPROOFERS BOOFERS WORKING IN PITCH, TAR OR CREOSOTE, COAL	9.36	.30	.60		
SHEET METAL WORKERS	10.21	.30	.60		
SOFT FLOOR LAYERS	8.88	3K+.35	1.10	.78	.04
SPRINKLER FITTERS	8.26	.45	.45	.10	.04
TILE SETTERS	11.23	.60	.90		.06
TRUCK DRIVERS (Building Construction):	8.50				
Light, pickups, Station wagons	7.875	.40	.35		
Medium flat beds and dumps, 5 tons or less; warehousemen and partmen	7.975	.40	.35		
Truck over 5 tons and semi-trailers	8.215	.40	.35		
TRUCK DRIVERS (Site preparation and grading):					
Group 1	6.90	.40	.35		
Group 2	7.00	.40	.35		
Group 3	7.15	.40	.35		

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Group 1 - Pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehouses or partmen; mechanic helpers and servicemen

Group 3 - Loaders; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; towtractors; atheys; dumpers and similar off-road equipment and mechanics on such equipment

WELDERS: Receive rates prescribed for craft performing operation to which welding is incidental.

DECISION NO. KS77-4081

CLASSIFICATION DEFINITIONS

LABORERS:

GROUP 1 - Board mat weavers & cable tiers, georgia buggy (manually operated), mixer-man-no skip, lift, mailers, salesman tenderers, track men, tractor swapper, truck dumper, wire mesh setter, water pump up to 4 inches, & all other general laborer including flagmen

GROUP 2 - Air tool operators, cement handlers (bulk) chain saw, georgia buggy (mechanically operated), grade man, hot mastic kettlemen, crusher feeder, joint man, jute man, mason tender, material batch bopper & scale man, mixer man, pier hole man working 10 ft. deep, pipelayer-drainage (concrete and/or corrugated metal), signal man (crane), truck dump-dry batch, vibrator operator, wagon and churn drill operator

GROUP 3 - Asphalt raker, barco tamper, concrete saw, creosote material handling & applying, nozzle burner (cutting torch and burning bar)

GROUP 4 - Conduit pipe, tile & duct line setter, form setter & liner on concrete paving, powderman, sandblasting & gunnite mormelman, sanitary sewer pipe layer, steel plate structure erectors, water and gas distribution lines

GROUP 5 - Leadmen or pusher

COUNTY: Sedgewick  
 DATE: Date of Publication  
 SUPERSEDES DECISION NO. KS77-4010, dated February 4, 1977 in 42 FR 7037  
 DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$10.60	.58	.325		.02
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS; STONEMASONS	10.08	.50	.25		.02
CARPENTERS:					
Carpenters	9.65	.50			.05
Millwrights, piledrivemen	9.95	.50			.05
CEMENT MASONS:					
Cement masons	9.85				
Troweling machine operator	10.10				
ELECTRICIANS	10.00	.60	1.24.25		.11
ELEVATOR CONSTRUCTORS	10.23	.445	.29	31+rtb	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.01R	.445	.29	31+rtb	.02
ELEVATOR CONSTRUCTORS' HELPERS (FRIG.)					
FOOTNOTES: a-Employer contributes 4% of basic hourly rate for over 5 years service, and 2% of basic hourly rate for 6 mos. to 5 years as vacation pay credit; b-1st 6 months none; 6 months - 5 years 2%; over 5 years 4% of basic hourly rate; also 6 paid holidays.					
GLAZIERS	9.09	.55	.42	12.5% .03	
	10.48		.25	.55	.02
IRONWORKERS					
7.20		.50	.25		.05
LABORERS (BUILDING CONSTRUCTION):					
GROUP 1 - Common laborers					
GROUP 2 - Power tool operators, compactors, concrete breaker, chipping tools, drilling tools, concrete axes, mechanically operated georgia buggy, mason tenders, plaster tenders, mortar mixers for plasterers, mason and cement finishers, all stacking scaffold, clean up for masons (building & wrecking), sand and concrete gun nozzleman, powderman	7.35	.50	.25		.05
LABORERS (SITE PREPARATION & GRADING)					
GROUP 1	5.30	.50	.25		.05
GROUP 2	5.45	.50	.25		.05
GROUP 3	5.55	.50	.25		.05
GROUP 4	5.70	.50	.25		.05
GROUP 5	5.80	.50	.25		.05

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
LATHERS	\$ 9.90		.15		.01
LINE CONSTRUCTION:					
Linemen	9.25	.45	.11		.11
Cable splicers	9.71	.45	.11		.11
Groundman, over 1 year	5.75	.45	.11		.11
Groundman, 1st year	4.36	.45	.11		.11
Powderman	7.67	.45	.11		.11
Line truck & equipment operators					
1st year	5.89	.45	.11		.11
2nd year	7.05	.45	.11		.11
Over 2 years experience	7.67	.45	.11		.11
PAINTERS:					
GROUP 1 - Brush, sheetrock taping and finishing	8.87	.10	.30		.01
GROUP 2 - Stage chair and window jack work to and including five stories high					
GROUP 3 - Stage chair and window jack work over five stories high; elevated tanks, towers, & stack over 75 ft. high; sandblasting & water blasting work from picks; stage chairs or platforms over 24 ft. in height	9.22	.10	.30		.01
GROUP 4 - Structural steel not done from scaffolding	9.62	.10	.30		.01
PLASTERERS	9.00				.01
PIPEFITTERS, FLANGERS	10.78	.64	.80		.04

DECISION NO. KS77-4081

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
8.35	.50	1.00	.75	.10
8.10	.50	1.00	.75	.10
7.85	.50	1.00	.75	.10
7.60	.50	1.00	.75	.10
7.35	.50	1.00	.75	.10
7.10	.50	1.00	.75	.10

POWER EQUIPMENT OPERATORS (SITE PREPARATION & GRADING):

- GROUP 1
- GROUP 2
- GROUP 3
- GROUP 4
- GROUP 5
- GROUP 6

CLASSIFICATION DEFINITIONS:

GROUP 1 - Asphalt paver & spreader, back hoe, boring machine, blades, all types, clamshell, concrete mixer paver operator, concrete central plant operator, (automatic), crane, truck crane, pitman crane hydro crane or any machine with power swing, derrick or derrick trucks, dragline operator, dredge operator, dozer, ditching machine, euclid loader, hoist-2active drums, loader, all types, mechanic or welder, mixer-mobile, multi-unit scraper, pilerdriver operator, power shovel operator, quad track, scoop operator, all types, side boom cat-cherry picker, skimmer scoop operator, pushcat operator

GROUP 2 - Asphalt plant operator, elevating grader operator

GROUP 3 - A-frame truck, asphalt roller operator, asphalt plant boiler fireman, backfiller operator, barber-greene loader, boiler-ether than asphalt, bull float operator, churn drill operator, compressor operator (1), concrete central plant operator, concrete mixer operator skip, concrete pump operator, crusher operator, distributor operator, finish machine operator-concrete, fireman other than asphalt, flex plane operator, fork lift, form grader operator, greaser, hoist 1 drum, jeep ditching machine, pavement breaker, self-propelled (of the hydra hammer or similar type), pump operator, 4" or over, two, pump operator other than dredge, screening & wash plant operator, small machine operator spreader box operator-self-propelled tractor operator over 50 h.p. self-propelled roller operator, other than asphalt, siphon & jets, subgrading machine operator, tank-or cat hauler operator, combination booster & boiler, toeboat operator, vibrating machine operator, not band

GROUP 4 - Concrete gang-saw, self-propelled (con-cut), conveyor operator harrow disc seeder, oiler, tractor operator, 50 h.p. or less without attachments

GROUP 5 - Oiler, motor crane

GROUP 6 - Master mechanic

DECISION NO. KS77-4081

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
10.10	.50	1.00	.75	.10
9.70	.50	1.00	.75	.10
8.65	.50	1.00	.75	.10
8.90	.50	1.00	.75	.10
8.10	.50	1.00	.75	.10
8.35	.50	1.00	.75	.10
10.60	.50	1.00	.75	.10
10.35	.50	1.00	.75	.10
10.60	.50	1.00	.75	.10
12.10	.50	1.00	.75	.10
11.10	.50	1.00	.75	.10

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

- GROUP 1
- GROUP 2
- GROUP 3:
- (a)
- (b)
- GROUP 4:
- (a)
- (b)
- GROUP 5
- GROUP 6
- GROUP 7
- GROUP 8
- GROUP 9

CLASSIFICATION DEFINITIONS:

GROUP 1 - boilers (1), boom cat, boring machine, ditching machine, concrete ready-mix plant, crane, truck crane, clamshell, dragline, dozer, scraper, all types, patrol, firemen (when operating steam or air valve), gradall, hi-loaders (over 1 yd), hoist, two drums, locomotive, mechanic or welder, mixer-mobile, paver, or any other machine with power swing, pilerdriver operator, power shovel, pump, concrete or other material

GROUP 2 - A-frame truck, barber-greene loader or similar type, bob cat hi loaders (1 yd and under), boiler (1), ditching machine-small, elevator operator, fireman, fork lift, greaser, equipment, hoist, one active drum, hydra hammer, jeep ditcher, mixer, other than paver, power broom, pump, 4" or larger, small machine engineer, welding machine (1)

GROUP 3 - (a) farm tractor (without attachments), (b) farm tractor (with attachments)

GROUP 4 - (a) Oiler, (b) motor crane

GROUP 5 - Tower cranes and derricks, trackie-type pile driving machines

GROUP 6 - Cranes and shovels 100 ft. of boom or over (including jib) or 2 yds. capacity or over or 30 tons or over (3) drum hoist

GROUP 7 - Cranes and shovels booms 200 ft. and over; (4) drum hoist

GROUP 8 - Master mechanic

GROUP 9 - Cranes with lifting ring

DECISION NO. KS77-4081

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Provision	Vacation		
ROOFERS:						
Roofers, Kettlemen	8.30	.28	.20			
Fitch	9.05	.28	.20			
Helpers	3.50	.28	.20			
SHEET METAL WORKERS	10.635	.70-3%	.64		.12	
SPRINKLER FITTERS	11.23	.60	.50		.08	
TRUCK DRIVERS (BUILDING CONSTRUCTION):						
GROUP 1 - Pickups, station wagons, flat beds-12,000# & under GVW license capacity	7.75	.50	.35			
GROUP 2 - Flat beds-16,000# GVW license capacity	7.825	.50	.35			
GROUP 3 - Flat beds-20,000# over GVW license capacity, dump, batch & water trucks, single axle	7.90	.50	.35			
GROUP 4 - Lowboys, semi-trailers dumpsters, a-frame tandems winch truck when used as such & transit mix	8.00	.50	.35			
TRUCK DRIVERS PREPARATION & GRAVING):						
GROUP 1	6.80	.50	.35			
GROUP 2	6.90	.50	.35			
GROUP 3	7.05	.50	.35			

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Group 1 - Pickups, panel trucks, station wagons, flat beds, dump and batch trucks (single axle)  
 Group 2 - Tandem trucks, warehouses or partmen, mechanic helpers and servicemen

Group 3 - Lowboys, semi-trailers, all transit mixer trucks (single or tandem axle), a-frame and winch trucks when used as such, scold, end and bottom dump, tounarochers, atneys, dumpers and similar off-road equipment and mechanic on such equipment

WELDERS: Receive rates prescribed for craft performing operation to which welding is incidental.

STATE: Kentucky COUNTY: Warren  
 DECISION NUMBER: KY77-1035 DATE: Date of Publication  
 Supersedes Decision No.: KY76-1077 dated July 23, 1976 in 41 FR-30525  
 DESCRIPTION OF WORK: Building Construction. (does not include single family homes and garden type apartments up to and including 4 stories).

FOOTNOTES:

- a. Six paid holidays
- b. Employer contributes 4% of regular hourly rate to vacation pay credit for employees who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
- c. Nine paid holidays: A through F, plus Washington's Birthday, Good Friday and Christmas Eve providing employees has worked 45 full days during the 120 calendar days prior to the holiday and the regular scheduled work days immediately preceding and following the holidays.

PAID HOLIDAYS:

A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Voc Rehab	
Asbestos workers	10.25	.45	.35		.02
Bollarmakers	10.80	.75	1.00		
Bricklayers & stone masons	8.54	.30	.20		.01
Carpenters	9.65	.30	.30		1/2 of 1%
Cement masons	8.50	.20	.18		.02
Electricians	9.70	.545	.35	48-wab	.02
Elevator constructors	11.00	.545	.35	48-wab	.02
Elevator constructors' helpers	70%JR				
Elevator constructors' helpers (prob.)	50%JR				
Glaziers	8.05	.50	.50		.02
Ironworkers:					
Structural, ornamental & reinforcing	9.25	.55	.50	.40	.10
Lathers	7.90	.20	.20	c	.01
Leadburners	8.25	.30			.01
Line Construction:					
Linemen	9.70	.18	.18		1/2 of 1%
Line truck, hole digger & cable applier	9.70	.18	.18		1/2 of 1%
Groundmen	8.20	.18	.18		1/2 of 1%
Painters:					
Brush	4.50				
Spray	5.50				
Structural steel up to '40	4.50		.30		.01
Filediversmen	9.65	.20	.75	.77	.10
Plasterers	8.50	.60	.40	.15	.14
Plumbers	10.65	.75	.75		
Roofers	7.15	.40	.25		
Sheet metal workers	11.99	1.067	.80		
Soft floor layers	9.65	.30	.30		.08
Sprinkler fitters	11.40	.60	.90	1.00	.08
Steamfitters	10.84	.50	.80		

Welders - receive rate prescribed for craft performing operation to which welding is incidental.



KY 77-1035 - (Cont'd)

KY 77-1035 - (Cont'd)

**LABORERS**

Laborers:  
 Group I: Unskilled  
 Group II:  
 All power driven tools, hod carriers, mason tenders, finisher tenders, mortar mixers, jack hammer, vibrators, wagon drill, core drill, test drill, concrete pump machine, tunnel boring machine, men in tunnel and crib ditch work, signal man-rip rap rock setters and hand-lers, asphalt rakers, tamers and smoothers, pipe layers, grout pump man, chain saw, pipe clearing, dipping and wrapping, swamper and straight cable hooking, cement guns, grade checkers machine excavating, tool room checkers, batch plant scale man, sand bog free air, sand bog compressed air, cutting torch man on salvage work, road form setters, brick slingers, hand spikers, power buggy, handling of creosote material, sandblasters, curbing of concrete and apply hardener, air and gas tampers, concrete saw, power posthole diggers and green cut men on concrete work.

Group III: Powdermen

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
5.60	.35	.35		
5.75	.35	.35		
6.10	.35		.35	

**POWER EQUIPMENT OPERATORS**

CLASS A  
 CLASS B  
 CLASS C

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
9.80	.35	.35		.05
7.51	.35	.35		.05
6.89	.35		.35	.05

**CLASS A:**

Auto petrol, batcher plant, bituminous paver, cableway, central compressor plant, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge operator, dredge engineer, elevating grader and all types of loaders, bootype machine, hoisting engine (2 or more drums) locomotive, motor scraper, carry-all scoop, bulldozer, heavy duty welder, mechanic, orange-peel bucket, pile driver, power blade, motor grader, roller (bituminous), scrapper, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, forklift, (regardless of lift height), all types of boom cats, core drills, hopper or push boat, concrete paver, Gradedall, hoist, hoyster, pumpcrete, Boss carrier, side boom, tail boom, rotary drill, hydro hammer, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydr crane, backfiller, guries, sub-grader

**CLASS B:**

All air compressors (600 cu. ft. per min. or greater capacity), bituminous mixer, joint sealing machine, concrete mixer (under 21 cu. ft.), form grader, roller (rock), tractor (50 hp. and over) bull float, finish machine, outboard motor boat, flexoplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, mechanic helper, Whitley oiler, self-propelled compactor, tractor and road widening trencher and farm tractor with attachments except backhoe, highlift and end loader, elevator (regardless of ownership when used for hoisting any building material), hoisting engine (one drum or buck hoist), wall pointers, grout pump, throttle-valve man, tugger, electric vibrator compactor

**CLASS C:**

Bituminous distributor, cement gun, conveyor, mud jack joint machine, roller (earth), tamping machine, tractors (under 50 hp.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand oiler, hydraulic post driver, and drill helper

**NOTICES**

KT77-1035 (Cont'd)

## TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
		H & W	Pensions	Vacation		
GROUP I	7.15	a	a	b		
GROUP II	7.05	a	a	b		
GROUP III	6.96	a	a	b		
GROUP IV	6.87	a	a	b		
GROUP V	6.75	a	a	b		

GROUP I: Euclid and other heavy moving equipment and lowboy; Winch truck and A-frame and monorail truck used to transport building materials; Fork lift truck when used to transport building materials

GROUP II: Mechanic; Concrete mixers (all types), hauling only on job site

GROUP III: Over 3 tons; Semi-trailer, tandem axle or pole trailers & dumps

GROUP IV: 3 tons and under; Mechanic helpers; Greasers and tire changers

GROUP V: Helpers

## FOOTNOTES:

a. Employer contributes \$13.50 per week to Health & Welfare; and \$14.00 per week to Pensions for each employee whose name appears on the payroll that week who has been employed a minimum of 20 work days within any 90 consecutive day period.

b. Employees who have been regularly employed on a project by an employer for one year and who have worked a minimum of 1200 hours during the year receive a vacation and pay for 10 hours. Employees who have been regularly employed on a project by an employer for one year, and who have worked a minimum of 650 hours during the year receive a vacation and pay for 20 hours. Employees who have worked 1200 hours since their 2nd year of employment and have completed three years receive an additional week vacation (40 hours).

DECISION NO. H077-4075

SUPERSEDES DECISION.

STATE: Kansas & Missouri

COUNTIES: Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas.

DATE: Date of Publication  
 Supersedes Decision No. H076-4177, dated November 12, 1976 in 41 FR 50139  
 DESCRIPTION OF WORK: Building Construction, (does not include single family homes and garden type apartments up to and including 4 stories) and heavy and highway construction in Johnson and Wyandotte Counties, Kansas only.

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
ASBESTOS WORKERS	11.22	.50	.80		.05	
BOILERMAKERS	10.30	.85	1.00		.02	
BRICKLAYERS AND STONEMASONS	9.725	.55	.35	1.00		
CARPENTERS:						
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas						
Carpenter, Millwrights and Piledrivemen	11.00	.50	.30		.05	
Zone 2 - Henry and Johnson Counties, Missouri						
Carpenters	10.625	.50	.30		.05	
Millwrights & Piledrivemen	11.00	.50	.30		.05	
CEMENT MASONS (Building Construction)						
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas	9.475	.40	.50	.50		
Cement masons	9.725	.40	.50	.50		
Composition						
Zone 2 - Henry and Johnson Counties, Missouri	9.075					
CEMENT MASONS (Heavy and Highway Construction):						
Johnson & Wyandotte Counties, Kansas	9.655	.40	.50	1.25		
ELECTRICIANS:						
Zone 1 - Western half of Clay and Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County, Missouri; Northwestern portion of Cass County, Missouri not including Pleasant Hills	11.22	.29	1%+.51	.80	.06	
Electricians						
Zone 2 - Henry, Johnson and Lafayette Counties, Missouri and remainder of Clay, Jackson, Platte and Cass Counties, Missouri						
Electricians (contracts over \$5,000)	11.22	.29	1%+.51	.80	.06	

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ELECTRICIANS - Zone 2 Cont'd:					
Electricians (contracts \$5,000 and under)	10.67	.39	1%+.51	.80	.06
Zone 3 - Ray County, Missouri; Electricians (contracts over \$5,000)	11.22	.39	1%+.51	.80	.06
Electricians (contracts \$5,000 and under)	10.06	.39	1%+.51	.80	.06
Zone 4 - Johnson and Wyandotte Counties, Kansas					
ELEVATOR CONSTRUCTORS	11.22	.39	1%+.51	.80	.06
ELEVATOR CONSTRUCTORS HELPERS	10.36	.445	.29	3%+.a+b	.02
ELEVATOR CONSTRUCTORS HELPERS (PROB.)	70%JR	.445	.29	3%+.a+b	.02
50%JR					
GLAZIERS	9.90	.55	.59	16.465	.03
IRONWORKERS	9.60	.70	1.00	1.00	.05
LABORERS:					
Building Construction					
Zone 1 - Cass, Clay, Jackson and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas	8.10	.45	.40	.50	.10
GROUP I	8.195	.45	.40	.50	.10
GROUP II	8.285	.45	.40	.50	.10
GROUP III	8.39	.45	.40	.50	.10
GROUP IV	8.49	.45	.40	.50	.10
GROUP V					
Zone 2 - Lafayette and Ray Counties, Missouri					
GROUP I	7.80	.45	.40	.50	.10
GROUP II	7.90	.45	.40	.50	.10
GROUP III	7.975	.45	.40	.50	.10
GROUP IV	8.05	.45	.40	.50	.10
GROUP V	8.15	.45	.40	.50	.10

FOOTNOTES: a-Employer contributes 4% of basic hourly rate for over 5 years of service and 2% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. b-1st 6 months-none; 6 months-5 years 2%; over 5 years 4% of basic hourly rate; also 6 paid holidays.

DECISION NO. 18077-6075

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pension	Vacation	
8.30	.50	.50	.75	.10
8.45	.50	.50	.75	.10
8.60	.50	.50	.75	.10
8.80	.50	.50	.75	.10
9.10	.50	.50	.75	.10

LABORERS:  
Site preparation and Grading,  
Heavy and Highway Construction  
Zone 3 - Johnson and Wyandotte  
Counties, Kansas

- GROUP I
- GROUP II
- GROUP III
- GROUP IV
- GROUP V

CLASSIFICATION DEFINITIONS

LABORERS  
GROUP I - Carpenter tenders, salamander tenders, dump man and ticket takers on stock piles; flagman; loading trucks under bins, hoppers and conveyors track men and all other general laborers

GROUP II - Air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; geogage buggies man; material batch hopper man; scale man; material mixer man (except on manholes, culvert dams, abutments and pier hole men working below ground); riprap pavers rock, block or brick; signalman; scaffolds over 10 ft. not self-supported from ground up; skip-man on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setter helpers; puddlers (paving only)

GROUP III - Crusher feeder; men handling concrete tiles or concrete materials men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used.

GROUP IV - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamper; wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline men on concrete paving, curbs, gutters and etc.; hot mastic kettlemans; hot tar applicator; hand blade operators; manhole builders; helpers and mortar men on brick or block manholes; sandblasting and gunite nozzle men; rubbing concrete; air tool operator in tunnels

GROUP V - Manhole builder (brick or block); dynamite and powder men

DECISION NO. 18077-6075

CLASSIFICATION DEFINITIONS

LABORERS

GROUP I - General labor; wiremesh handlers or setters; carpenter tenders; track men; flagmen; signalmen; salamander tenders; window cleaners; floor cleaners; landscape men; sod layers; wrecker (for alterations or entire projects)

GROUP II - Plumber laborers (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); vibrator, jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds

GROUP III - Cutting torch or burner men; georgia buggies (self-propelled); fork lift; hoseman; insulation man

GROUP IV - Fork lift (masonry); brick tender; plasterer tender; stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding)

GROUP V - Barco, Jackson or similar tamp operators; asphalt rakers; powder men; mastic hot kettle men; sandblasting and gunite nozzle men; wagon and churn drill operators

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pension	Vacation	
6.475	.50	.50	.50	.10
6.575	.50	.50	.50	.10
6.80	.50	.50	.50	.10

Zone 3 - Henry and Johnson  
Counties, Missouri  
GROUP I  
GROUP II  
GROUP III

CLASSIFICATION DEFINITIONS

LABORERS:  
GROUP I - Carpenter tenders, track men, wreckers (alterations or entire projects); reinforcing rod carriers; flagmen; signal men; all other general laborers

GROUP II - Plumber laborers; stonemason tenders; air tool operators, sewer work, water lines, conduit pipe, drain tile and duct lines; batter board man or pipe & ditch work; pier hole men working below ground; vibrator man; jackhammer & chipping hammer operators; material batch hopper man; scaleman; spreader or screed man on asphalt machine; chain or concrete sawman; brush feeders on pulverizers; swinging scaffolds; cement handlers (bulk or sack); laser beam man

GROUP III - Plaster tenders; hod carriers; brick tender; cutting torch & burner men; asphalt rakers; barco tamper; jackson or any other similar tamper; power buggy operators; powderman; mastic kettlemans; sandblasting & gunite nozzle men; head pipe layer on sewer work; men working in tunnels; head form setters & stringline men; hot tar applicator

DECISION NO. M077-4075

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Passions	Vacation	
9.00				
11.37	.57	1.15		.11
11.64	.65	.80		.11
10.10	.50	1.00	.75	.10
9.85	.50	1.00	.75	.10
8.60	.50	1.00	.75	.10
9.10	.50	1.00	.75	.10
9.10	.50	1.00	.75	.10
9.35	.50	1.00	.75	.10
10.35	.50	1.00	.75	.10
10.60	.50	1.00	.75	.10
10.10	.50	1.00	.75	.10
11.10	.50	1.00	.75	.10
10.60	.50	1.00	.75	.10
9.85	.50	1.00	.75	.10
9.60	.50	1.00	.75	.10
9.60	.50	1.00	.75	.10
8.85	.50	1.00	.75	.10

Zone 2 - Henry and Johnson Counties, Missouri.  
**PIPEFITTERS**  
**PLUMBERS**  
**POWER EQUIPMENT OPERATORS:**  
 Building Construction  
 GROUP I  
 GROUP II  
 GROUP III  
 GROUP IV  
 GROUP V  
 GROUP VI  
 GROUP VII  
 GROUP VIII  
 GROUP IX  
 GROUP X  
 GROUP XI  
 GROUP XII  
 GROUP XIII

CLASSIFICATION DEFINITIONS

**POWER EQUIPMENT OPERATORS**  
 GROUP I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe, all types; barber-greene loader (similar type); blade-power, all types; boats-power; boilers (2); boring machines (all types); cableways; cherry pickers (all types); chip spreaders; clamshells; combination concrete hoist and mixer such as mixer/mobile (with tower, 50¢ per hour additional); compressors (21150 ft. or over not more than 20' apart; compressors tandem (any sizes); compressors single, truck mounted; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; draglines; dredges - any type power grade-all - similar type; hoist, endless chain-power operated with power travel; loaders - all types; locomotives all types; mechanic and welder; mucking machine; orange peels; pile drivers - all types; pumps - material all types; push cats; scoops all types; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man

**GROUP II - A-frame trucks; boilers (1); brooms - power operated (all types); chip spreader (front man); clef plane operator; compressors (1) 150' or over; concrete saws, self-propelled; conveyor operator; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; fork lift - all types and sizes (except masonry); greaser hoist; hoist, endless chain - power operated; hopper - power operated; hydra hammer (all types); lad-a-vator - similar types; mixers with side loaders; Pumps (with well points); pump rollers - all types; siphons, jets, and jennies, sub-graders; tractors over 50 h.p.**

DECISION NO. M077-4075

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Passions	Vacation	
10.60	.40			
10.56	.38	1%+.15		8% 8%
9.83	.38	1%+.15		8% 8%
6.97	.38	1%+.15		8% 8%
5.99	.38	1%+.15		8% 8%
7.34	.38	1%+.15		8% 8%
9.25	.45	1%		8%
9.71	.45	1%		8%
5.75	.45	1%		8%
4.36	.45	1%		8%
7.67	.45	1%		8%
5.89	.45	1%		8%
7.05	.45	1%		8%
7.67	.45	1%		8%
10.82	3.65%	3.25%		
9.00				
10.19	.55	.70		.06
11.19	.55	.70		.08
8.50				
9.50				
11.15				

**LATHERS**  
**LINE CONSTRUCTION:**  
 ZONE 1 - Cass, Clay, Jackson, Platte and Ray Counties, Missouri; Wyandotte and remainder of Johnson Counties, Kansas  
 Linemen  
 Heavy equipment operator  
 Groundman  
 Groundman (1st year)  
 Groundman Powderman  
 ZONE 2 - Western 3/4 of Johnson County, Kansas  
 Linemen  
 Cable splicers  
 Groundman, over 1 year.  
 Groundman, 1st year  
 Powderman  
 Line truck and equipment operators  
 1st year  
 2nd year  
 Over 2 years' experience  
**MARBLE AND TILE SETTERS**  
**MARBLE AND TILE SETTERS**  
**HELPERS**  
**PAINTERS:**  
 ZONE 1 - Cass, Clay, Henry, Jackson, Johnson (excluding Whiteman Air Force Base), Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas  
 Brush and towers  
 Spray  
 ZONE 2 - Johnson County, Missouri (Whiteman Air Force Base only)  
 Brush  
 Spray  
**PLASTERERS:**  
 ZONE 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS

GROUP I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator - 2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engines; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoist engine - 2 active drums; locomotive operator, standard gauges; mechanics and welders, field or shop maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump - 2; quad-trac; scoop operator - all types; scoops in tandem; self-propelled rotary drill (seroy or equal - not air trac); shovel operator; side discharge spreader; sideboom cat; skimmer scoop operator; slip - form paver (CMI, REX, or equal); throttle man, truck crane; welding machine maintenance operator - 2

GROUP II - A-frame trucks; asphalt hot mix silos; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; chip spreader; concrete batch plant, dry-power operator; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader operator; greaser; hoisting engine - 1 drum; latourneau roofer; multiple compactor; pavement breaker, self-propelled, of the hydra-hammer or similar types; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.

GROUP III - 1; chip spreader (front man); chum drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than light type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combustion boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator - 1

GROUP IV - Mechanic's helpers; oilers

GROUP V - Oiler driver, all types

GROUP VI - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; pile-drivers, 80 ft. of boom or over (including jib); shovels, 3 yds. capacity or over

GROUP VII - Cranes or rigs, over 200 ft. of boom (including jib)

GROUP VIII - Hoists (each additional drum over 1 drum)

Men working in tunnels or shafts (not air shafts or coffer dams) of twenty-five (25) ft. of more in length or depth will be paid fifty cents (50¢) per hour above the regular classification.

GROUP III - Oiler

GROUP IV - Fork lift-masonry

GROUP V - Oiler driver all types

GROUP VI - Tractors (except when hauling material) less than 50 h.p.

GROUP VII - Clamshells, 80 ft of boom or over (including jib); crane or rigs, 80 ft. of boom or over (including jib); draglines, 80 ft. of boom or over (including jib); pile-drivers, 80 ft. of boom or over (including jib)

GROUP VIII - Crane or rigs, over 200 ft. of boom

GROUP IX - Hoists each additional drum over 1 drum

GROUP X - Master mechanic

GROUP XI - Crane - tower or climbing

GROUP XII - Ready mixed concrete plants;

- (a) Crane operator
- (b) Loader operator
- (c) Plant man
- (d) Conveyor operator

POWER EQUIPMENT OPERATORS

(Cont'd)

Site preparation and grading, Heavy and Highway Construction Zone 1 - Johnson and Wyandotte Counties, Kansas

- GROUP I
- GROUP II
- GROUP III
- GROUP IV
- GROUP V
- GROUP VI
- GROUP VII
- GROUP VIII

Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
	R & W	Pensions	Vacation	
10.10	.50	1.00	.75	.10
9.85	.50	1.00	.75	.10
9.60	.50	1.00	.75	.10
8.60	.50	1.00	.75	.10
9.10	.50	1.00	.75	.10
10.35	.50	1.00	.75	.10
10.60	.50	1.00	.75	.10
10.10	.50	1.00	.75	.10

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ROOFERS:	9.80	.45	.60		.04
Roofers					
Helpers:					
1st 6 months	5.88	.45	.60		.04
2nd 6 months	6.37	.45	.60		.04
3rd 6 months	6.86	.45	.60		.04
4th 6 months	7.35	.45	.60		.04
5th 6 months	7.84	.45	.60		.04
6th 6 months	8.33	.45	.60		.04
7th 6 months	8.82	.45	.60		.04
SHEET METAL WORKERS	11.355	.50	.50		.05
SOFT FLOOR LAYERS	8.36	.40	.60	10%	.08
SPRINKLER FITTERS (Henry, Johnson and Lafayette Counties, Missouri)	11.40	.60	.90		.08
TERRAZZO WORKERS	10.48	3.65%	3.25%		
TRUCK DRIVERS:					
Building Construction:					
GROUP I	8.525	.50	1.00		
GROUP II	8.375	.50	1.00		
GROUP III	8.65	.50	1.00		
GROUP IV	8.775	.50	1.00		
GROUP V	8.675	.50	1.00		
GROUP VI	8.875	.50	1.00		
GROUP VII	8.725	.50	1.00		
GROUP VIII	8.625	.50	1.00		

CLASSIFICATION DEFINITIONS

**TRUCK DRIVERS**  
 GROUP I - Warehousemen and stock man  
 GROUP II - Flat beds; pick-ups; dump trucks, under 10 yds.  
 GROUP III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers  
 GROUP IV - Straddle trucks, steel tractors (when used for towing); hydro lift trucks; hydraulically operated serial lifts; heavy hauling, a-frame winch and fork lifts; heavy excavating (dumper, euclid, etc.); double bottom units (20 tons capacity and over)  
 GROUP V - Distributor truck drivers and operators; oilers, greasers and mechanics' helpers

GROUP VI- Mechanics

GROUP VII - Transit mix, 5 yds. and over  
 GROUP VIII - Transit mix, under 5 yds.

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
TRUCK DRIVERS:					
Site Preparation and Grading, Heavy and Highway Construction Zone I - Johnson and Wyandotte Counties, Kansas					
GROUP I	8.59	.50	1.00	.75	
GROUP II	8.79	.50	1.00	.75	
GROUP III	9.10	.50	1.00	.75	
GROUP IV	9.25	.50	1.00	.75	
GROUP V	8.365	.50	1.00	.75	

CLASSIFICATION DEFINITIONS

**TRUCK DRIVERS**  
 GROUP I - One team; station wagons; pickup trucks; material trucks, single axle; tank wagon drivers, single axle  
 GROUP II - Material trucks, tandem; two teams; semi-trailers; winch trucks - fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers; single axle; tank wagon drivers tandem or semi-trailers; insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and other similar excavating equipment  
 GROUP III - A-frame, lowboy, and boom truck driver  
 GROUP IV - Mechanics and welders  
 GROUP V - Mechanics' helpers, oilers and greasers  
**WELDERS** - receive rate prescribed for craft performing operation to which welding is incidental.

STATE: Missouri & Kansas

COUNTIES: Cass, Clay, Jackson, Platte & Ray Missouri; Johnson & Wyandotte, Kansas

DECISION NO.: MO77-4076

DATE: Date of Publication

Supersedes Decision No. MO76-4103 dated July 2, 1976, in 41 FR 27602  
 DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Apprent. Tr.
		H & W	Pensions	Vacation		
ASBESTOS WORKERS	\$11.52	.50	.80		.05	
BOILERMAKERS	10.30	.85	1.00		.02	
BRICKLAYERS and STONEMASONS	9.725	.55	.35	1.00		
CARPENTERS, MILLWRIGHTS, FILEDRIVERS	10.50	.50	.30		.05	
CEMENT MASONS: Composition.	9.475	.40	.50	.50		
	9.725	.40	.50	.50		
ELECTRICIANS (Up to and including 3 stories): (that portion of Johnson County west of Abby, Oxford and Shawnee Townships)	6.60	.45	15+.20		.05	
ZONE 1 - Cass, Clay, Jackson, Platte and Ray Counties, Missouri; and Wyandotte County, Kansas; and remainder of Johnson County, Kansas	8.31	.39	15+.51	.80	.06	
ELECTRICIANS (4 stories): ZONE 1 - Western half of Clay and Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County; Northwestern portion of Cass County, Missouri, not including Pleasant Hill	11.22	.39	15+.51	.80	.06	
ZONE 2 - Remainder of Cass, Clay, Jackson and Platte Counties, Missouri; Electricians (contracts \$5,000 and over)	11.22	.39	15+.51	.80	.06	
Electricians (contracts under \$5,000)	10.67	.39	15+.51	.80	.06	

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Apprent. Tr.
		H & W	Pensions	Vacation		
ELECTRICIANS (4 stories): (Cont'd) ZONE 3 - Ray County, Missouri; Electricians (contracts \$5,000 and over)	\$11.22	.39	15+.51	.80	.06	
Electricians (contracts under \$5,000)	10.06	.39	15+.51	.80	.06	
ELEVATOR CONSTRUCTORS	10.56	.445	.29	36+Feb	.02	
ELEVATOR CONSTRUCTORS' HELPER	70LJR	.445	.29	36+Feb	.02	
ELEVATOR CONSTRUCTORS' HELPER (PROB.)	50LJR					
FOOTNOTE: a. Employer contributes 4% basic hourly rate for over 5 yrs. service, and 2% of basic hourly rate for 6 mo. to 5 yrs. as Vacation Pay Credit.						
b. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.	9.90	.55	.59	16.46%	.03	
GLAZIERS	9.60	.70	1.00	1.00	.05	
IRONWORKERS						
LABORERS: Building Construction						
ZONE 1 - Cass, Clay, Jackson and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas:						
Group 1	8.10	.45	.40	.50	.10	
Group 2	8.195	.45	.40	.50	.10	
Group 3	8.295	.45	.40	.50	.10	
Group 4	8.39	.45	.40	.50	.10	
Group 5	8.49	.45	.40	.50	.10	
ZONE 2 - Ray County, Missouri						
Group 1	7.80	.45	.40	.50	.10	
Group 2	7.90	.45	.40	.50	.10	
Group 3	7.975	.45	.40	.50	.10	
Group 4	8.05	.45	.40	.50	.10	
Group 5	8.15	.45	.40	.50	.10	



CLASSIFICATION DEFINITIONS

LABORERS:

Group 1 - General labor; Wire mesh handlers or setters; Carpenter tender; Track men; Flagmen; Signalmen; Salsander tenders; Window cleaners; Floor cleaners; Landscape men; Sod layers; Wrecker (for alterations or entire projects)

Group 2 - Plumber laborers (conduit pipe, sewer work, drain tile and deck lines, digging and back filling), power tool operators; Pier hole diggers (over 10 ft.); Vibrator, jackhammer, and chipping hammer operators; Chain saw operators; Concrete saw operators; Brush feeders on pulverizers; Reinforcing steel handlers; Air temp operators; Ditch witch operators; Swinging scaffolds

Group 3 - Cutting torch or burner men; Georgia buggies (self-propelled); Fork lift; Hosemen; Insulation man

Group 4 - Fork lift (masonry); Brick tender; Plasterer Tender; Stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding)

Group 5 - Barco, Jackson or similar tamp operators; Asphalt rakers; Powder men; Mastic hot kettle men; Sandblasting and gunnite nozzlemen; Wagon and churn drill operators

LABORERS:

Group 1 - Carpenter tenders; Salsander tenders; Dump man and ticket takers on stock piles; Flagmen; Loading trucks under bins, hoppers and conveyors; Track men and all other general laborers

Group 2 - Air tool operators; Cement handler (bulk or sack); Chain or concrete saw; Deck hands; Dump man on earth fill; Grade checkers on cuts and fills; Georgia buggies man; Material batch hopper man; Scale man; Material mixer man (except on manholes, coffer dams, abutments and pier hole men working below ground); Riprap pavers rock, block or brick; Signalman; Scaffolds over 10 ft., not self-supported from ground up; Skipman on concrete paving; Vibrator man; Wire mesh setters on concrete paving; All work in connection with sewer, water, gas, gasolines, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; Power tool operators; All work in connection with hydraulic or general dredging operations; Form setter balpers; Puddlers (paving only)

Group 3 - Crusher feeder; Men handling creosote ties or creosote materials; Men working with and handling epoxy material or materials (where special protection is required); Head pipe layer on sewer work; Topper of standing truss; Batter board man on pipe and ditch work; Feeder man on wood pulverizers; Board and willow mat weavers and cable tiers on river work; All laborers working on underground tunnels where compressed air is not used

Group 4 - Spreader or screed man on asphalt machine; Asphalt rakers; Laser beam man; Barco tamper; Jackson or any other similar tamp; Wagon driver; Churn drills; Air track drills and all other similar drills; Form setters; gutters and etc.; Hot mastic kettlemen; Hot tar applicator; Hand blade operators; Manhole builders helpers and mortar men on brick or block manholes; Sandblasting and gunnite nozzle men; Rubbing concreté; Air tool operator in tunnels

Group 5 - Manhole builder (brick or block); Dynamite and powder men

CLASSIFICATION DEFINITIONS

LABORERS:

Group 1 - General labor; Wire mesh handlers or setters; Carpenter tender; Track men; Flagmen; Signalmen; Salsander tenders; Window cleaners; Floor cleaners; Landscape men; Sod layers; Wrecker (for alterations or entire projects)

Group 2 - Plumber laborers (conduit pipe, sewer work, drain tile and deck lines, digging and back filling), power tool operators; Pier hole diggers (over 10 ft.); Vibrator, jackhammer, and chipping hammer operators; Chain saw operators; Concrete saw operators; Brush feeders on pulverizers; Reinforcing steel handlers; Air temp operators; Ditch witch operators; Swinging scaffolds

Group 3 - Cutting torch or burner men; Georgia buggies (self-propelled); Fork lift; Hosemen; Insulation man

Group 4 - Fork lift (masonry); Brick tender; Plasterer Tender; Stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding)

Group 5 - Barco, Jackson or similar tamp operators; Asphalt rakers; Powder men; Mastic hot kettle men; Sandblasting and gunnite nozzlemen; Wagon and churn drill operators

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
LABORERS: (Cont'd)					
Site Preparation and Grading					
ZONE 3 - Johnson and Wyandotte Counties, Kansas; Site Preparation, Incidental Paving and Utilities Clay, Jackson, Platte and Ray Counties, Missouri	\$8.30	.50	.50	.75	.10
Group 1	8.45	.50	.50	.75	.10
Group 2	8.60	.50	.50	.75	.10
Group 3	8.80	.50	.50	.75	.10
Group 4	9.10	.50	.50	.75	.10

POWER EQUIPMENT OPERATORS (Cont'd)

CLASSIFICATION DEFINITIONS

Zone 1

Group 1: Asphalt paver and spreader; Asphalt plant mixer operator; Asphalt plant operator; Back fillers; Backhoe, all types; Barber-grease loader (similar type); Blade-power, all types; Boats-power; Boilers (2); Boring machines (all types); Cableways; Cherry pickers (all types); Chip spreader; Clamshells; Combination concrete hoist and mixer such as mixer-vehicle (with tower, 50% per hour additional); Compressors (2) 105 ft. or over not more than 10' apart; Compressors tandem (any sizes); Compressors single, truck mounted; Concrete ready-mixed plant, portable (job site); Concrete mixer paver; Crane-overhead; Crusher, rock; Derricks and derrick cars (power operated); Ditchdig machines; Dozers; Draglines; Dredges-any type power; Grate-all similar type; Hoist, endless chain - power operated with power travel; Loaders - all types; Locomotives all types; Mechanic and welder; Mucking machine; Orange peels; Pile drivers - all types; Pumps - material all types; Push cats; Scoops all types; Self-propelled rotary drill; Shovel, power; Side boom; Skimmer scoop; Testhole machine; Throttle man

Group 2: A-frame trucks; Boilers (1); Brooms-power operated (all types); Chip spreader (front man); Clef plane operator; Compressors (1) 105' or over; Concrete saw, self-propelled; Conveyor operator; Crab-power operated; Curb finishing machine; Firemen on rigs; Flex plane; Floating machine; Form grader; Fork lift-all types and sizes (except masonry); Grasser; Hoist; Hoist, endless chain - power operated; Hopper - power operated; Hydra hammer (all types); Lad-a-vator - similar type; Mixers with side loaders; Pumps (with well points); Pump; Rollers - all types; Siphons, jets and jennies; Sub-grader; Tractors over 50 h.p.

Group 3: Oiler

Group 4: For lift-masonry

Group 5: Oiler driver all types

Group 6: Tractors (except when hauling material less than 50 h.p.)

Group 7: Clamshells, 80 ft. of boom or over (including jib); Crane or rigs, 80 ft. or boom or over (including jib); Draglines, 80 ft. of boom or over (including jib); Pile-drivers, 80 ft. of boom or over (including jib)

Group 8: Crane or rigs, over 200 ft. of boom

Group 9: Hoists each additional drum over 1 drum

Group 10: Master Mechanic

Group 11: Crane - tower or climbing

Group 12: Ready Mixer Concrete Plants: (a) Crane operator; (b) Loader operator; (c) Plant man; (d) Conveyor operator

	Erlage Benefits Payments				Education and/or App. Tr.
	Basic Heavy Rates	H & W	Positions	Vacation	
LATHERS	10.60	.40			
MARBLE AND TILE SETTERS	10.82	3.65%	3.25%		
MARBLE AND TILE SETTERS' HELPERS	9.00				
PAINTERS:					
Brush, Tapers and Boiler	10.19	.55	.70		.08
Spray	11.19	.55	.70		.08
PLASTERERS	11.45	.57	1.15		.11
PIPEFITTERS	11.37	.65	.80		.11
PLUMBERS	11.64				
POWER EQUIPMENT OPERATORS:					
Building Construction (Zone 1)					
Group 1	10.10	.50	1.00	.75	.10
Group 2	9.85	.50	1.00	.75	.10
Group 3	8.60	.50	1.00	.75	.10
Group 4	9.10	.50	1.00	.75	.10
Group 5	9.10	.50	1.00	.75	.10
Group 6	9.35	.50	1.00	.75	.10
Group 7	10.35	.50	1.00	.75	.10
Group 8	10.60	.50	1.00	.75	.10
Group 9	10.10	.50	1.00	.75	.10
Group 10	11.10	.50	1.00	.75	.10
Group 11	10.60	.50	1.00	.75	.10
Group 12:					
(a)	9.85	.50	1.00	.75	.10
(b)	9.60	.50	1.00	.75	.10
(c)	9.60	.50	1.00	.75	.10
(d)	8.85	.50	1.00	.75	.10

POWER EQUIPMENT OPERATORS (Cont'd)

CLASSIFICATION DEFINITIONS

Zone 2

Group 1: Asphalt paver and spreader; Asphalt plant console operator; Auto grader; Backhoe; Blade operator, all types; Rollers-2; Booster pump on dredge; Boring machine (truck or crane mounted); Bulldozer operator; Classball operator; Compressor maintenance operator-2; Concrete plant operator, central mix; Concrete mixer paver; Crane operator; Derrick or derrick trucks; Ditching machine; Dragline operator; Dredge engine; Dredge operator; Drill cut with compressor mounted on cat; Drilling or boring machine, rotary, self-propelled; High loader-fork lift; Hoisting engine-2 active drums; Locomotive operator, standard gauge; Mechanics and welders, field or shop; Maintenance operator; Mucking machine pipe driver operator; Pitman crane operator; Pump-2; Quad-trac; Scoop operator-all types; Scoops in tandem; Self-propelled rotary drill (Lacey or equal - not air trac); Shovel operator; Side discharge spreader; Sideboom cat; Skipper scoop operator; Slip-form paver (CMI, BEV, or equal); Throttle man; Truck crane; Welding machine maintenance operator-2

Group 2: A-frame truck; Asphalt hot mix silo; Asphalt plant fireman, drum or boiler; Asphalt plant mixer operator; Asphalt plant man; Asphalt roller operator; Backfiller operator; Chip spreader; Concrete batch plant, dry-power operator; Concrete mixer operator, skip loader; Concrete pump operator; Crusher operator; Elevating grader operator; Greaser; Hoisting engine-1 drum; Latonmesu roofer; Multiple compactor; Pavement breaker, self-propelled, of the hydra-hammer or similar type; Power shield; Pug mill operator; Stump cutting machine; Towboat operator; Tractor operator over 50 h.p.

Group 3: Rollers - 1; Chip spreader (front man); Churn-drill operator; Compressor maintenance operator-1; Concrete saw, self-propelled; Conveyor operator; Distributor operator; Finishing machine operator; Fireman, rig; Float operator; Form grader operator; Pump; Pump maintenance operator, other than dredge; Roller operator, other than high type asphalt; Screening and washing plant operator; Self propelled street broom or sweeper; Screening and jets; Sub-grading machine operator; Tank car heater operator-combination boiler and booster; Tractor, 50 h.p. or less with attachments; Vibrating machine operator, not hand; Welding machine Maintenance operator - 1

Group 4: Mechanic's Helpers; Oilers

Group 5: Oiler driver, all types

Group 6: Clamshell, 3 yds. capacity or over; Crane or rig, 80 ft. of boom or over (including jib); Dredges, 3 yds. capacity or over; File-drivers, 80 ft. of boom or over (including jib); Shovels, 3 yds. capacity or over

DECISION NO. M077-5025

POWER EQUIPMENT OPERATORS (Cont'd)  
Site Preparation and Grading  
Johnson and Wyandotte Counties,  
Kansas; Site Preparation,  
Incidental Paving and Utilities-  
Clay, Jackson, Platte, and Ray  
Counties, Missouri

ZONE 2  
Group 1  
Group 2  
Group 3  
Group 4  
Group 5  
Group 6  
Group 7  
Group 8

Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
	H & W	Pensions	Vacation	
10.10	.50	1.00	.75	.10
9.85	.50	1.00	.75	.10
9.60	.50	1.00	.75	.10
9.35	.50	1.00	.75	.10
9.10	.50	1.00	.75	.10
8.85	.50	1.00	.75	.10
8.60	.50	1.00	.75	.10
8.35	.50	1.00	.75	.10
8.10	.50	1.00	.75	.10
7.85	.50	1.00	.75	.10
7.60	.50	1.00	.75	.10
7.35	.50	1.00	.75	.10
7.10	.50	1.00	.75	.10

DECISION NO. M077-4076

	Fringe Benefits Payments			Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	
<b>TRUCK DRIVERS: (Cont'd)</b> Site preparation and grading - Johnson and Wyandotte Counties, Kansas; Site Preparation, Incidental paving and Utilities Clay, Jackson, Platte and Ray Counties, Missouri				
<u>Zone 2</u>				
Group 1	8.59	.50	1.00	.75
Group 2	8.79	.50	1.00	.75
Group 3	9.10	.50	1.00	.75
Group 4	9.25	.50	1.00	.75
Group 5	8.365	.50	1.00	.75

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Zone 2

- Group 1: One team; Station wagons; Pickup trucks; Material trucks, single axle; Tank wagon drivers, single axle
- Group 2: Material trucks, tandem; Two teams; Semi-trailers; Winch trucks - fork trucks; Distributor drivers and operators; Agitator and transit mix; Tank wagon drivers, single axle; Tank wagon drivers tandem or semi-trailer; Insley wagons; Dump trucks, excavating, 3 cu. yds. and over; Dumpsters; Half-tracks; Spadoacs; Euclids and other similar excavating equipment
- Group 3: A-frame, lowboy, and boom truck driver
- Group 4: Mechanics and welders
- Group 5: Mechanics' helpers, oilers and greasers

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

DECISION NO. M077-4076

	Fringe Benefits Payments			Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	
<b>ROOFERS:</b>	9.80	.45	.60	.04
<b>Roofers</b>				
Helpers:				
1st 6 months	5.88	.45	.60	.04
2nd 6 months	6.37	.45	.60	.04
3rd 6 months	6.86	.45	.60	.04
4th 6 months	7.35	.45	.60	.04
5th 6 months	7.84	.45	.60	.04
6th 6 months	8.33	.45	.60	.04
7th 6 months	8.82	.45	.60	.04
<b>SHEET METAL WORKERS</b>	11.355	.50	.50	.05
<b>SOFT FLOOR LAYERS</b>	8.36	.60	.60	.08
<b>SPRINKLER FITTERS</b>	11.63	.60	.90	.06
<b>TERRAZZO WORKERS</b>	10.48	3.65%	3.25%	.06
<b>TRUCK DRIVERS:</b>				
Building Construction				
<u>Zone 1</u>				
Group 1	8.525	.50	1.00	
Group 2	8.575	.50	1.00	
Group 3	8.65	.50	1.00	
Group 4	8.775	.50	1.00	
Group 5	8.675	.50	1.00	
Group 6	8.875	.50	1.00	
Group 7	8.725	.50	1.00	
Group 8	8.625	.50	1.00	

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Zone 1

- Group 1: Warehousemen and stockmen
- Group 2: Flat beds; Pick-ups; Dump trucks, under 10 yds.
- Group 3: Dump trucks, 10 yds. and over; steel trucks; semi-truck drivers
- Group 4: Straddle trucks; Wheel tractors (when used for towing); Hydro lift trucks; Hydraulically operated serial lifts; Heavy hauling, A-frame winch and fork lifts; Heavy excavating (dumper, Euclid, etc.); Double bottom units (20 tons capacity and over)
- Group 5: Distributor truck drivers and operators; Oilers, greasers and mechanics' helpers
- Group 6: Mechanics

DECISION NO. NM 77-4074

COUNTY: Statewide

STATE: New Mexico

DATE: Date of Publication

DECISION NO. NM77-4074

Supersedes Decision No. NM77-4022 dated February 15, 1977 in 42 FR 10243

DESCRIPTION OF WORK: Commercial building and heavy engineering construction consisting of construction, modifications, addition, alterations or repairs on railroad construction projects, drainage project, aqueducts, irrigation projects, flood control projects, reclamation projects, reservoirs, water supply projects (exclusive of distribution lines and appurtenances and filtration plants), earth dams (over one million yards), concrete dams, dikes, levees, revetments, channels, channel cutoffs, intakes, dredging projects, jetties, breakwaters, docks, harbors, excavation and disposal by contract or overburden and the excavation and loading of all material from which the overburden has been removed, open-pit strip mining, viaducts, pedestrian tunnels, piers, abutments and clearing and grubbing. incidental to such heavy construction projects (exclusive of such work in connection with highway, building and light engineering projects), subways, tunnels, shafts, missile silos and missile projects. (except buildings underground), hydro-electric power plant projects and power plant facilities in their entirety (exclusive of steam plants), electric transmission lines, and including the operation, maintenance and repair of all land and floating plant, equipment, vehicles and other facilities used in connection with and serving the aforementioned work and serviced incidental to such projects (also, including Residential construction in Santa Fe, McKinley, Bernalillo, Rio Arriba, Taos, Sandoval, Valencia and San Juan Counties, but not on the Navajo Indian Reservation).

BRICKLAYERS' ZONE DEFINITIONS

Zone I - Union, Harding, Santa Fe, Valencia, Torrance, Teas, Socorro, Mora, McKinley, Colfax, Catron, San Miguel, San Juan, Sandoval, Rio Arriba, Bernalillo and Los Alamos Counties.

From basing point of Albuquerque Main Post Office:  
 Zone I-A - 0 to 25 road miles  
 Zone I-B - 25 to 50 road miles  
 Zone I-C - Over 50 road miles

ZONE II - Curry, Roosevelt Counties

ZONE III - DeBaca, Guadalupe and Quay Counties

ZONE IV - Chaves County

ZONE V - Lincoln County

ZONE VI - Lee and Eddy Counties

ZONE VII - Otero County

ZONE VIII - Luna County

ZONE IX - Grant County Communities of Silver City, Bayard, Central, Burley, and New town site of Tyrone; Hidalgo and Sierra Counties.

ZONE X - Grant County, except communities listed in Zone IX.

ZONE XI - Dona Ana County

	Basic Monthly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION	\$10.66	.50	1.17a	.50	.06
ASSESSORS WORKERS (Statewide, except Union, Harding, Lea, Curry, Roosevelt and Quay Counties)	9.85	.55	.45	.50	.07
ASSESSORS WORKERS (Union, Harding, Lea, Roosevelt, Curry and Quay Counties)	9.65	.75	1.00	.50	.02
BOTTLEMAKERS	9.56	.57	.50	.50	.10
BRICKLAYERS-Stonesasons:	10.56	.57	.50	.50	.10
Zone 1-A	11.06	.57	.50	.50	.10
Zone 1-B	9.61	.57	.30	.50	.10
Zone II	10.36	.57	.30	.50	.10
Zone III	9.81	.57	.20	.50	.10
Zone IV	10.36	.57	.20	.50	.10
Zone V	9.01	.57	.30	.50	.10
Zone VI	9.81	.57	.30	.50	.10
Zone VII	7.65	.48	.20	.48	.10
Zone VIII	7.89	.48	.20	.48	.10
Zone IX	8.015	.48	.20	.48	.10
Zone X	7.64	.48	.20	.48	.10
Zone XI					

GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION

CARPENTERS:  
 Dwelling houses & apartments not to exceed two stories in height:  
 Zone 1-A .90  
 Zone 1-B .90  
 Zone 1-C .90

General Building and Heavy Engineering and Residential Construction (Dwelling Houses and apartments over two stories in height):  
 Zone 2-A .90  
 Zone 2-B .90  
 Zone 2-C .90

	Basic Monthly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION	\$ 7.50	.90	.90	.65	.20
CARPENTERS: Dwelling houses & apartments not to exceed two stories in height:	8.50	.90	.90	.65	.20
Zone 1-A	9.25	.90	.90	.65	.20
Zone 1-B					
Zone 1-C					
General Building and Heavy Engineering and Residential Construction (Dwelling Houses and apartments over two stories in height):	9.20	.90	.90	.65	.20
Zone 2-A	10.45	.90	.90	.65	.20
Zone 2-B	10.75	.90	.90	.65	.20
Zone 2-C					

CARPENTERS' ZONE DEFINITIONS

AREA I - Statewide except Farmington, San Juan County  
 AREA II - Farmington, San Juan County  
 Zone I - 0-15 miles from Farmington City Hall  
 Zone II - 15-35 miles from Farmington City Hall  
 Zone III - 35 miles and over from Farmington City Hall

CARPENTERS' ZONE DEFINITIONS

CARPENTERS (STATEWIDE) - From nearest basing points of the following cities of Towns: Alamojorco, Albuquerque, Artesia, Bayard, Belen, Carlsbad, Clovis, Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Pochales, Raton, Roswell, Ruidoso, Santa Fe, Santa Rosa, Silver City, Socorro, Taos, and Tucumanari.  
 ZONE I - Dwelling houses & apartments not to exceed two stories in height:  
 Zone I-A - 0 - 15 road miles from nearest basing point  
 Zone I-B - 15 to 35 road miles from nearest basing point  
 Zone I-C - Over 35 road miles from nearest basing point  
 ZONE II - General Building & Heavy Engineering and Residential Construction (Dwelling Houses and Apartments over two stories in height):  
 Zone 2-A - 0 to 15 road miles from nearest basing point  
 Zone 2-B - 15 to 35 road miles from nearest basing point  
 Zone 2-C - Over 35 road miles from nearest basing point

	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Education and/or Appr. Tr.
MILLRIGHTS & PILEDRIVERS:				
Zone 1	\$9.95	.90	.90	.20
Zone 2	11.20	.90	.90	.20
Zone 3	11.95	.90	.90	.20

MILLRIGHTS & PILEDRIVERS' ZONE DEFINITIONS

BASING POINT - From Albuquerque City Limits:  
 Zone 1 - 0 to 15 road miles from basing point  
 Zone 2 - 15 to 35 road miles from basing point  
 Zone 3 - Over 35 road miles from basing point

	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Education and/or Appr. Tr.
CEMENT MASONS				
Area I	\$ 8.37	.57	.50	
Area II				
Zone 1	8.42	.57	.50	
Zone 2	8.77	.57	.45	
Zone 3	9.02	.57	.45	
Cement masons (Residential)	5.35	.57	.50	
Cement masons (Heavy Engineering)	8.37	.57	.50	
CEMENT MASONS: Composition & Machine Operators				
Area I	8.52	.57	.50	
Area II				
Zone 1	8.67	.57	.50	
Zone 2	8.92	.57	.45	
Zone 3	9.27	.57	.45	

	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Education and/or Appr. Tr.
ELECTRICIANS:				
Area I				
1-A	9.90	.60	18+.70	1/4
1-B	10.55	.60	18+.70	1/4
1-C	11.15	.60	18+.70	1/4
1-D	11.88	.60	18+.70	1/4
Area 2				
2-A	8.80	.60	18+.70	1/4
2-B	9.42	.60	18+.70	1/4
2-C	9.94	.60	18+.70	1/4
2-D	10.55	.60	18+.70	1/4
ZONE II	11.15	.60	18+.70	1/4
ZONE III	9.10	.30	18	1/4
3-A	10.55	.30	18	1/4
3-B				
ZONE IV	9.70	.60	18	.01
4-A	10.05	.60	18	.01
4-B	10.20	.60	18	.01
4-C	10.45	.60	18	.01
4-D				
ZONE V	5.80	.30	18	1/4
CABLE SPlicERS:				
Area I				
1-A	10.89	.60	18+.70	1/4
1-B	11.58	.60	18+.70	1/4
1-C	12.18	.60	18+.70	1/4
1-D	12.87	.60	18+.70	1/4
Area 2				
2-A	9.68	.60	18+.70	1/4
2-B	10.30	.60	18+.70	1/4
2-C	10.82	.60	18+.70	1/4
2-D	11.44	.60	18+.70	1/4
ZONE III	12.18	.60	18+.70	1/4
3-A	9.35	.30	18	1/4
3-B	10.80	.30	18	1/4
ZONE IV	10.05	.60	18	.01
4-A	10.40	.60	18	.01
4-B	10.55	.60	18	.01
4-C				
4-D	10.60	.60	18	.01

## ELECTRICIANS-CABLE SPACERS ZONE DEFINITIONS

## ZONE I

AREA 1 - Bernallillo, Santa Fe, Torrance, DeBecca, Guadalupe, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos Rio Arriba, Grant, Sandoval, Valencia, Socorro, Catron, McKinley, Sierra and all of San Juan County excluding the Navajo Indian Reservation.

AREA 2 - Chaves, Curry, Lincoln and Roosevelt Counties

## AREAS 1-A &amp; 2-A

From nearest basing point cities, towns and mileage from main post office in the following towns:

Albuquerque - 15 miles from main post office  
 Santa Fe - 15 miles from main post office  
 Las Vegas - 8 miles from main post office  
 Farmington - 8 miles from main post office  
 Babson - 6 miles from main post office  
 Tucuman - 6 miles from main post office  
 Artec - 6 miles from main post office  
 Roswell - 12 miles from main post office  
 Budozo - 12 miles from main post office  
 Portales - 12 miles from main post office  
 Carrizozo - 12 miles from main post office  
 Clovis - 12 miles from main post office  
 Gallup - 10 miles from main post office  
 \*Pojoaque - 2 miles from main post office

\*All areas adjacent to Pojoaque that are over two (2) miles distant from the main post office in that town will be zoned out of Santa Fe.

## AREAS 1-B &amp; 1-B

Area 1-B and 1-B extending up to 20 miles beyond Area 1-A & 2-A

## AREAS 1-C &amp; 2-C

Area 1-C & 2-C extending up to 30 miles from Area 1-A & 2-A

## AREAS 1-D &amp; 2-D

Area 1-D & 2-D anything beyond 30 miles from Area 1-A & 2-A

## ZONE II - Los Alamos County

ZONE III - Dona Ana, Otero, Luna, Hidalgo Counties

Zone 3-A - Within 10 miles radius from the post office in Las Cruces and within a 5 mile radius from the Post Office in Alamogordo.

Zone 3-B - Dona Ana, Otero, Luna, and Hidalgo Counties (except that area specified in Zone 3-A)

ZONE IV - Eddy and Lea Counties - the following zones shall be designated from the main post office of Artesia, Carlsbad, Hobbs and Lovington:

Zone 4-A - 0 - 12 miles from main post office  
 Zone 4-B - 12 to 21 miles from main post office  
 Zone 4-C - 22 to 40 miles beyond main post office  
 Zone 4-D - 40 miles and beyond main post office

## ZONE V

- Single or multiple, family dwelling or apartments up to and including 26 units under one roof not exceeding two stories - Bernallillo, Santa Fe, Taos, Rio Arriba, Sandoval, Valencia and San Juan Counties, but not on the Navajo Indian Reservation

GENERAL BUILDING CONSTRUCTION AND HEAVY ENGINEERING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
ELEVATOR CONSTRUCTORS: Bernallillo, Catron, Colfax, Curry, DeBecca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union and Valencia Counties	\$ 10.42 70¢JR 50¢JR	.545 .545	.35 .35	4¢+4¢ 4¢+4¢	.02 .02
Elevator constructors Elevator constructors helpers Elevator constructors, prob. Chaves, Hidalgo, Dona Ana, Eddy Grant, Lea, Luna, Otero and Sierra Counties	8.17 70¢JR 50¢JR	.545 .545	.35 .35	4¢+4¢ 4¢+4¢	.02 .02
GLAZIERS: Zone I Zone II	6.94 8.54	.30 .35	.10 .20		.02 .02

## GLAZIERS' ZONE DEFINITIONS

## GLAZIERS

ZONE I - Dona Ana, Luna, Otero and Quay Counties  
 ZONE II - Catron, Chaves, Colfax, Curry, DeBecca, Eddy, Grant, Guadalupe,  
 Harding, Hidalgo, Lea, Lincoln, Los Alamos, McKinley, Mora, Rio  
 Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe,  
 Sierra, Socorro, Taos, Torrance, Union and Valencia Counties

GENERAL BUILDING CONSTRUCTION AND HEAVY ENGINEERING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
IRONWORKERS: ZONE I - Area I ZONE I - Area II	\$10.30 10.30	.55 .55	1.00 1.00		.14 .14
Zone 1 Zone 2 Zone 3 Zone 4	11.05 11.80 12.05	.55 .55 .55	1.00 1.00 1.00		.14 .14 .14
ZONE II ZONE III	9.23 10.23	.55 .55	1.00 1.00		.10 .10

IRONWORKERS ZONE DEFINITIONS

ZONE I

AREA I - Bernalillo, Catron, Colfax, DeBaca, Guadalupe, Lincoln, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, Santa Fe, Socorro, Taos, Torrance and Valencia Counties

ZONE II

AREA II - Farmington, San Juan County
Zone 1 - Shall extend a distance of 6 road miles inclusive beyond the City Hall.
Zone 2 - Shall extend a distance of 8 road miles inclusive beyond the outer perimeter of zone 1.
Zone 3 - Shall extend a distance of 10 road miles inclusive beyond the outer limits of zone 2.
Zone 4 - Shall extend a distance of 27 road miles inclusive beyond the outer limits of zone 3.
All areas not within Zones 1, 2, 3, and 4 shall revert to the \$15.00 per day subsistence rate.

ZONE III

Donna Ana, county with the exception of that portion of the county that lies within the White Sands Missile Range; Chaves County, Eddy County except that Potash Basin and defined as the area 10 road miles on Highway 82 and Highway 189, east of Carlsbad.

ZONE IV

Curry, Harding, Quay, Union, Hidalgo, Grant, Lea, Luna, Otero and Sierra Counties; also Potash Basin, White Sands and McGregor Missile Ranges.

LABORERS: GENERAL BUILDING, HEAVY ENGINEERING CONSTRUCTION

Table with 5 columns: Group (I-V), Basic Hourly Rates, H & W, Pensions, Vacation, Education and/or Appr. Tr. (0.05 for all groups)

LABORERS' CLASSIFICATION DEFINITIONS

GROUP I - UNSKILLED: Building and Common Laborers, Carpenter tenders, Concrete workers, chainmen-stakedrivers, concrete buggy operators
GROUP II - SEMI-SKILLED: Air and power tool operator, asphalt takers, demolition, gunite rebound men, fog machine operator, power buggy operators, rodmen, sand blasters (pot men), nozzle-men, wagon core, rod & chainmen, cutting torch operators; and diamond drillers tender outside.
GROUP III - Wagon core, diamond drillers
GROUP IV - Concrete burner, cement mason tenders, hod carriers, mortar mixers, plaster spreader operators, plaster tenders, gunite nozzle-men, pipe layer, pumpcrete nozzle-men
GROUP V - Powdermen and blasters

Table for LABORERS (RESIDENTIAL CONSTRUCTION) with 5 columns: Group (I-IV), Basic Hourly Rates, H & W, Pensions, Vacation, Education and/or Appr. Tr. (0.05 for all groups)

RESIDENTIAL LABORERS' CLASSIFICATION DEFINITIONS

GROUP I - UNSKILLED: Building and common laborers, carpenter tenders, concrete workers, chainmen-stakedrivers, concrete buggy operators, hand
GROUP II - SEMI-SKILLED: Air and power tool operator, asphalt takers, demolition, gunite rebound men, fog machine operator, power buggy operator, rodmen, sand blasters (pot men), nozzle-men, wagon core, rod & chainmen, cutting torch operators; and diamond drillers tender outside.
GROUP III - Wagon core, diamond drillers
GROUP IV - Concrete burner, cement mason tenders, hod carriers, mortar mixers, plaster spreader operators, plaster tenders, gunite nozzle-men, pipe layer, pumpcrete nozzle-men

Table for LABORERS: Zone I and Zone II with 5 columns: Zone, Basic Hourly Rates, H & W, Pensions, Vacation, Education and/or Appr. Tr. (0.02 for Zone I, 0.01 for Zone II)

LABORERS' ZONE DEFINITIONS

Zone I - Catron, Grant, Bernalillo, Roosevelt, Union, Sandoval, San Juan, Socorro, Torrance and Valencia Counties.
Zone II - Colfax, Los Alamos, Mora, Rio Arriba, San Miguel, Santa Fe and Taos Counties.



Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$ 9.55	.60	15+ 60		1/4
9.00	.60	15+ 60		1/4
8.58	.60	15+ 60		1/4
7.88	.60	15+ 60		1/4
7.88	.60	15+ 60		1/4
4.88	.60	15+ 60		1/4
5.31	.60	15+ 60		1/4
6.26	.60	15+ 60		1/4
10.51	.60	15+ 60		1/4
9.82	.60	15+ 60		1/4
9.35	.60	15+ 60		1/4
8.58	.60	15+ 60		1/4
8.58	.60	15+ 60		1/4
5.31	.60	15+ 60		1/4
5.99	.60	15+ 60		1/4
6.56	.60	15+ 60		1/4
7.645	.48			1/4
6.07	.48			
8.52	.35	.20		.05
9.02	.35	.20		.05
8.77	.35	.20		.05
9.10	.35	.20		.05
8.85	.35	.20		.05
9.32	.35	.20		.05
9.82	.35	.20		.05
8.32	.35	.20		.05

**LINE CONSTRUCTION:**  
**BERNALILLO COUNTY ONLY**  
 Cable splicers  
 Linemen - technicians  
 Equipment operators  
 Equipment mechanics  
 Powderman  
 Groundmen and jackhammer opers.  
 1st 6 months  
 2nd 6 months  
 Experienced  
**LINE CONSTRUCTION:**  
**STATEWIDE (Except Bernalillo Co.)**  
 Cable splicers  
 Linemen - technicians  
 Equipment operators  
 Equipment mechanics  
 Powdermen  
 Groundmen and jackhammer Opers.:  
 1st 6 months  
 2nd 6 months  
 Experienced  
**MARBLE, TILE & TERRAZZO WORKERS**  
**MARBLE, TILE & TERRAZZO HELPERS**

**PAINTER: ZONE I**  
 Zone 1-A  
 Zone 1-B  
 Zone 1-C  
 Zone 1-D  
 Zone 1-E  
**PAINTERS (INDUSTRIAL WORK):**  
 Brush, roller, sandblast and grinder operators  
 Spray  
 Pot tender

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
7.05	.35	.20		.05
8.27	.35	.20		.05
7.70	.35	.20		.05
7.15	.35	.20		.05
7.80	.35	.20		.05
7.05	.35	.20		.05
7.55	.35	.20		.05
7.66	.30			.02
8.08	.30			.02
7.802	.30			.02
8.08	.30			.02
8.51	.30			.02
	.30			.02
	.30			.02
	.30			.02
	.30			.02
	.30			.02
	.30			.02
	.30			.02
6.55	.35	.20		.05
7.20	.35	.20		.05
6.80	.35	.20		.05
6.65	.35	.20		.05
7.30	.35	.20		.05
7.05	.35	.20		.05

**PAINTERS' ZONE II**  
 Zone 2-A  
 Zone 2-B  
 Zone 2-C  
 Zone 2-D  
 Zone 2-E  
 Zone 2-F  
 Zone 2-G  
**PAINTERS' ZONE III**  
 Zone 3-A  
 Zone 3-B  
 Zone 3-C  
 Zone 3-D  
 Zone 3-E  
 Zone 3-F - 15¢ above scale  
 Zone 3-G - 25¢ above scale  
 Zone 3-H - 50¢ above scale  
 Zone 3-I - 75¢ above scale  
 Zone 3-J - \$1.00 above scale  
**PAINTERS' ZONE IV**  
 Zone 4-A  
 Zone 4-B  
 Zone 4-C  
 Zone 4-D  
 Zone 4-E  
 Zone 4-F

PAINTERS' ZONE AND CLASSIFICATION DEFINITIONS

PAINTERS:

- ZONE I - San Juan, McKinley, Bernalillo, Torrance, Guadalupe, Quay, Catron, Socorro, Lincoln, DeBaca, Roosevelt, Chaves, Valencia, Sierra, Grant, Hidalgo, Curry, Lea and Eddy Counties, New Mexico.
- Zone 1-A - Painters, roller and hand textures
- Zone 1-B - Painters, spray, sandblasting, painter on steel bridges, tanks towers, pipe and structural
- Zone 1-C - Paperhanger
- Zone 1-D - Drywall finisher; Ames tool operator
- Zone 1-E - Hand finisher machine texture

- ZONE II - Colfax, Harding, Los Alamos, Mora, Sandoval, San Miguel, Rio Arriba, Taos, Union and Santa Fe Counties.
- Zone 2-A - Painters and roller
- Zone 2-B - Paperhangers
- Zone 2-C - Spray, sandblast, steel, special coating applicator
- Zone 2-D - Vinyl hangers
- Zone 2-E - Drywall finisher tool and machine texture
- Zone 2-F - Sand texture
- Zone 2-G - Hand finisher

ZONE III - Luna, Otero and Dona Ana Counties

- Zone 3-A - Brush, tapers and rollers
- Zone 3-B - Spray, sandblasting
- Zone 3-C - Ames tool and steel brush after erection
- Zone 3-D - Stripping machine
- Zone 3-E - Radio towers, water tanks, smoke stack
- Zone 3-F - Radio towers, water tanks, smoke stacks 50 to 75 feet
- Zone 3-G - Radio towers, water tanks, smoke stacks 75 to 100 feet
- Zone 3-H - Radio towers, water tanks, smoke stacks 100 to 200 ft
- Zone 3-I - Radio towers, water tanks, smoke stacks 200 to 300 ft
- Zone 3-J - Radio towers, water tanks, smoke stacks 300 to 400 ft.

ZONE IV - (Residential Construction in Sandoval, Rio Arriba and Taos Counties)

- Zone 4-A - Brush and roller
- Zone 4-B - Spray, parking lot striping
- Zone 4-C - Paperhangers
- Zone 4-D - Vinyl hangers
- Zone 4-E - Drywall finishers - Ames tool op., machine texture
- Zone 4-F - Drywall finishers - hand finisher

GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION

PLASTERERS:

- Statewide, (except Otero, Grant, Sierra, Dona Ana, Luna and Hidalgo Counties
- Otero, Grant, Sierra, Dona Ana
- Luna and Hidalgo Counties

PLUMBERS-PIPEFITTERS:

- Area I
- Area II
- Area III
- Specific Area
- Residential

	Basic Heavy Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
	\$ 8.00	.48	.30		.01
	7.27	.48			.01
	10.95	.63	1.36		.12
	11.45	.63	1.36		.12
	12.70	.63	1.36		.12
	11.58	.63	1.36		.12
	6.50	.63	.25		.12

PLUMBERS - PIPEFITTERS' ZONES DEFINITIONS

RISING POINT CITIES OR TOWNS:

- Albuquerque, Alamogordo, Anthony, Artesia, Beles, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Ramon, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucuman, Truth of Consequence and Socorro, New Mexico.

Area I - Shall include a distance of seven road miles inclusive beyond the city or town limits.

Area II - Shall extend a distance of four road miles inclusive beyond the outer perimeter of area I.

Area III - Shall apply to all areas not within areas I or 2, or not within the specific area.

Specific Area - Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds, Atlas Missile Complex Sites in Chaves and Lincoln Counties, and the Oro Grande Range Camp and Dona Ana and Otero Counties.

HEAVY ENGINEERING CONSTRUCTION (POWER EQUIPMENT OPERATORS AREA DEFINITIONS)

AREA I - Statewide, except San Juan County  
 Basing points for zone pay shall be determined from the Center of the following cities - Albuquerque, Carlsbad, Gallup, Hobbs and Las Cruces.

Zone I - 0 to 50 miles  
 Zone II - Over 50 miles  
 AREA II - Farmington, San Juan County  
 Zone I - 0 to 15 miles from Farmington City Hall  
 Zone II - 15 to 35 miles from Farmington City Hall  
 Zone III - Over 35 miles from Farmington City Hall

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
GROUP I	\$7.43	.60	.60		.11
Zone 1	8.43	.60	.60		.11
Zone 2	7.97	.60	.60		.11
GROUP II	8.97	.60	.60		.11
Zone 1	8.05	.60	.60		.11
Zone 2	9.05	.60	.60		.11
GROUP III	8.11	.60	.60		.11
Zone 1	9.11	.60	.60		.11
Zone 2	8.17	.60	.60		.11
GROUP IV	9.17	.60	.60		.11
Zone 1	8.27	.60	.60		.11
Zone 2	9.27	.60	.60		.11
GROUP V	8.37	.60	.60		.11
Zone 1	9.37	.60	.60		.11
Zone 2	8.55	.60	.60		.11
GROUP VI	9.55	.60	.60		.11
Zone 1	9.35	.60	.60		.11
Zone 2	10.35	.60	.60		.11

HEAVY CONSTRUCTION (AREA I):

GROUP I  
 Zone 1  
 Zone 2  
 GROUP II  
 Zone 1  
 Zone 2  
 GROUP III  
 Zone 1  
 Zone 2  
 GROUP IV  
 Zone 1  
 Zone 2  
 GROUP V  
 Zone 1  
 Zone 2  
 GROUP VI  
 Zone 1  
 Zone 2  
 GROUP VII  
 Zone 1  
 Zone 2  
 GROUP VIII  
 Zone 1  
 Zone 2  
 GROUP IX  
 Zone 1  
 Zone 2

POWER EQUIPMENT OPERATORS AREA DEFINITIONS:

AREA I - Farmington, San Juan County  
 Zone I - 0 - 15 miles from Farmington City Hall  
 Zone II - 15-35 miles from Farmington City Hall  
 Zone III - 35-50 miles from Farmington City Hall  
 AREA II - Statewide, except San Juan County

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Pensions	Vacation	
GROUP 1	\$7.58	.60	.60		.11
Group 2	8.12	.60	.60		.11
Group 3	8.20	.60	.60		.11
Group 4	8.76	.60	.60		.11
Group 5	8.32	.60	.60		.11
Group 6	8.42	.60	.60		.11
Group 7	8.52	.60	.60		.11
Group 8	8.70	.60	.60		.11
Group 9	9.50	.60	.60		.11
ZONE II	8.83	.60	.60		.11
Group 1	9.37	.60	.60		.11
Group 2	9.45	.60	.60		.11
Group 3	9.51	.60	.60		.11
Group 4	9.57	.60	.60		.11
Group 5	9.67	.60	.60		.11
Group 6	9.77	.60	.60		.11
Group 7	9.85	.60	.60		.11
Group 8	10.75	.60	.60		.11
GROUP 9	9.06	.60	.60		.11
Group 1	9.62	.60	.60		.11
Group 2	9.70	.60	.60		.11
Group 3	9.76	.60	.60		.11
Group 4	9.82	.60	.60		.11
Group 5	9.92	.60	.60		.11
Group 6	10.02	.60	.60		.11
Group 7	10.20	.60	.60		.11
Group 8	11.00	.60	.60		.11
GROUP 10	7.56	.60	.60		.11
Group 1	8.12	.60	.60		.11
Group 2	8.20	.60	.60		.11
Group 3	8.26	.60	.60		.11
Group 4	8.32	.60	.60		.11
Group 5	8.42	.60	.60		.11
Group 6	8.52	.60	.60		.11
Group 7	8.70	.60	.60		.11
Group 8	9.50	.60	.60		.11

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (BUILDING & RESIDENTIAL)

GROUP I

Fireman, oiler, screedman, scale operator such as (Bin-A-Batch), rubber tired farm type tractor, tractors under 50 HP w/o attachments, breakdown, concrete paving curing machine (bridge-type), helpers; mechanic, welder grease truck.

GROUP II

Roller, sheepfoot or pneumatic self propelled w/o dozer, concrete conveyor, service truck operator (head oiler), air compressor (300 CFM and over), pumps (6" and over), screening plants, concrete mixers (under 1 CY), concrete saw or grinder-span type, 1 drum hoists, air topper, elevating belt type loaders, forklift, lumber stacker, tractor-farm type (under 50 HP w/attachments), motorman and industrial locomotive operator, winch trucks, front end loader (under 2 CY), power plants which generate over 15 KW, welding machines

GROUP III

Simultaneous distributors, boilers, retort and hot oil heaters, concrete mixers (1 CY and over), concrete paver-single drum, drilling equipment, motor graders (rough), shaft and tunnel equipment; (refrigeration, slusher, jumbo form), trenching machines (all types), pumpcrete and gunite machines, slipform paver, mechanical bullfrogs, concrete slab spreading machine, concrete slab finishing machines, crushing plants.

GROUP IV

Front end loader (2 thru 10 CY), rollers, steel, wheeled-all types, bulldozers, scrapers, (motor or towed), elevating graders, concrete batching plants, self propelled rollers equipped with dozer. Twin bowl scrapers and quad 8 or 9 pushers (35% over basic rate). Three bowl scrapers (60% over basic rate). Tractor (farm type w/hydraulic backhoes).

GROUP V

Hydraulic cranes with less than 50 feet of boom (20 tons and under). Concrete paver double drum. 2 drum hoist, auto fine grader, cat cranes, hysters, side and swingboom cats.

GROUP VI

Mocking machines, all types; motor grader, finisher; mechanic, welder

GROUP VII

Steam engines; loader (front end over 10 CY); concrete pump (snorkel type)

GROUP VIII

All shovel type equipment; cranes, draglines, backhoes, derricks, guy and stiff leg; pipemobile (No. 2 op.), pile driver, hydraulic cranes (20 tons and over), mine hoist, belt loader ("C.M.I." type), cranes & draglines, with booms and jib over 150 feet - 25% per hour additional.

GROUP IX

Shovel (wheel type), boring machine (tunnel or shaft mole), pipemobile

(HEAVY ENGINEERING CONSTRUCTION)  
POWER EQUIPMENT OPERATORS

HEAVY CONSTRUCTION (AREA III)

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Residuals	Vacation	
GROUP I	\$ 7.43	.60	.60	.11	.11
Zone 1	8.18	.60	.60	.11	.11
Zone 2	8.43	.60	.60	.11	.11
Zone 3					
GROUP II	7.97	.60	.60	.11	.11
Zone 1	8.72	.60	.60	.11	.11
Zone 2	8.97	.60	.60	.11	.11
Zone 3					
GROUP III	8.05	.60	.60	.11	.11
Zone 1	8.80	.60	.60	.11	.11
Zone 2	9.15	.60	.60	.11	.11
Zone 3					
GROUP IV	8.11	.60	.60	.11	.11
Zone 1	8.86	.60	.60	.11	.11
Zone 2	9.11	.60	.60	.11	.11
Zone 3					
GROUP V	8.17	.60	.60	.11	.11
Zone 1	8.92	.60	.60	.11	.11
Zone 2	9.17	.60	.60	.11	.11
Zone 3					
GROUP VI	8.27	.60	.60	.11	.11
Zone 1	9.02	.60	.60	.11	.11
Zone 2	9.27	.60	.60	.11	.11
Zone 3					
GROUP VII	8.37	.60	.60	.11	.11
Zone 1	9.12	.60	.60	.11	.11
Zone 2	9.37	.60	.60	.11	.11
Zone 3					
GROUP VIII	8.55	.60	.60	.11	.11
Zone 1	9.30	.60	.60	.11	.11
Zone 2	9.55	.60	.60	.11	.11
Zone 3					
GROUP IX	9.35	.60	.60	.11	.11
Zone 1	10.10	.60	.60	.11	.11
Zone 2	10.35	.60	.60	.11	.11
Zone 3					

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (HEAVY ENGINEERING CONST.)

GROUP I  
Fireman, oiler, screedman, scale operator such as (bin-a-batch), rubber tired farm type tractor, tractors under 50 HP w/o attachments, breakham, concrete paving curing machine (bridge-type), belpers; (mechanic, welder), grease truck

GROUP II  
Rollers, sheepfoot or pneumatic self propelled w/o dozer, concrete conveyor, service truck operator (head oiler), air compressor (300 CFM and over), pumps, (6" and over), screening plants, concrete mixers (under 1 CY), concrete saw or grader-span type, 1 drum hoist, air tugger, elevating belt loaders, forklift, lumber stacker, tractor-farm type (under 50 HP w/attachment), motor-man and industrial locomotive operator, winch truck front end loader (under 2 CY), power plants which generate over 15 KW, welding machines

GROUP III  
Bituminous distributors, boilers, retort and hot oil heaters, concrete mixers (1 CY and over), concrete paver-single drum, drilling equipment, motor graders (trench), shaft and tunnel equipment, refrigeration, slusher, jumbo forms, trenching machines, (all types), pump crete and gunite machines, slipform paver, mechanical bullfloats, concrete slab spreading machine, concrete slab finishing machine, asphalt plants, bituminous finishing machines, crushing plants

GROUP IV  
Front end loader ( 2 thru 7 CY), rollers steel wheeled (all types), bulldozers, scrapers, (motor or towed), elevating graders, concrete batching plants, self-propelled rollers, equipped with dozer, twin-bowl scrapers and quad 3 or 5 pushers (35% over basic rate), three bowl scrapers (60% over basic rate).

GROUP V  
Front end loader (over 7 CY thru 10 CY), hydraulic cranes, with less than 50 feet of boom (20 tons and under), concrete paver, double drum, cat cranes, bysters, side and swingboom cats, 2 drum hoist, auto fine grader.

GROUP VI  
Mucking machines, all types, motor grader (finish), mechanic, welder

GROUP VII  
Steam engineers, loader (front end over 10 CY)

GROUP VIII  
All shovel type equipment; cranes, draglines, backhoes, derricks, guy and stiff leg, pipe mobile (90. 2 operator), piledriver, hydraulic cranes (20 tons and over), mine hoist, belt loader ("C.M.I." Type)

GROUP IX  
Shovel (wheel type), boring machine (tunnel or shaft mole), pipe mobile

	Fringe Benefits Payments				
	Basic Hourly Rates	H & W	Pensions	Vacation	Education and/or App. Tr.
ROOFERS	\$ 7.55	.25			
<u>SHEET METAL WORKERS:</u>					
Zone 1	10.87	.53	1.00		.12
Zone 2	9.17	.38+.51	.385		.825
Zone 3	8.35	.20			.05
Zone 4	11.87	.53	1.00		.12
SPRINKLER FITTERS	11.01	.60	.90		.08

SHEET METAL WORKERS' ZONE DEFINITIONS

Zone 1 - Bernalillo, Catron, Chaves, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Miguel, Santa Fe, Socorro, Union, Taos, Torrance, Valencia, San Juan Counties, Kirtland Air Force Base.

Zone 2 - Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Sierra and Otero Counties

Zone 3 - Holloman Air Force Base, White Sands and McGregor Ranges

Zone 4 - Los Alamos County

SOFT FLOOR LAYERS:

Zone 1	7.23	.30	.10		.02
Zone 2	7.85	.35	.30		.02

SOFT FLOOR LAYERS' ZONE DEFINITIONS

Zone 1 - Dona Ana, Luna and Otero Counties

Zone 2 - Statewide (excluding Dona Ana, Luna and Otero Counties)

SOUND INSTALLERS:

SOURDMAN

Zone 1	9.30	.60	1.8		.48
Zone 2	10.46	.60	1.8		.48
Zone 3	12.79	.60	1.8		.48

TECHNICIANS

Zone 1	7.44	.60	1.8		.48
Zone 2	8.60	.60	1.8		.48
Zone 3	10.93	.60	1.8		.48

SOUND INSTALLERS:

Zone 1	6.05	.60	1.8		.48
Zone 2	7.21	.60	1.8		.48
Zone 3	9.54	.60	1.8		.48

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING, RESIDENTIAL AND HEAVY ENGINEERING CONSTRUCTION).

- GROUP I**  
Pickup 3/4 ton and under, service station, including lubrication, light tire repair and washer, swamper or riding helper, 2 or up
- GROUP II**  
Bus or taxi driver, dump or batch truck under 8 C.W.L.C.; flat bed (bobtail) 2 ton and under; mechanic and welder helper; fork lift under 5 ton MSC.
- GROUP III**  
Dump trucks (including all highway and off highway) 8 up to 16 C.Y.W.L.C.; water, fuel or oil trucks less than 3,000 gal., flat bed (bobtail) over 2 tons

**GROUP IV**  
Distributor driver; heavy tire repairman; lumber carrier driver; young buggy or similar equipment, transit mix or agitator 2 or 3 axle bobtail equipment; scissor truck; bulk cement bobtail 2 or 3 axles; semi-trailer driver (flat-bed or van single axle); forklifts 5 ton and over MSC; field equipment servicemen.

**GROUP V**  
Dumper and dumpcrete driver; water, fuel or oil truck, 3,000 to 6,000 gal.; lowboys and light equipment driver; euclid type tank wagon under 6,000 gal.

**GROUP VI**  
Vacuum truck; dump trucks (including all highway and off-highway 16 up to 22 C.Y.W.L.C.)

**GROUP VII**  
Transit mix or agitator semi or 4 axle equipment driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver; semi-double; 4 axle bobtail; winch truck and "A" frame; dump trucks (including all highway and off-highway) 22 CY up to 35 C.Y.W.L.C.; head field equipment servicemen.

**GROUP VIII**  
Euclid diesel power turnrocker; terra cotta-DW10--DW20--LeTourneau Pulls and similar diesel powered equipment when used to haul materials and assigned to a teamster--lowboy heavy equipment driver; water, fuel or oil trucks 6,000 gal. and over including tank wagon drivers, semi-trailer driver (flat-bed or van tandems); light equipment mechanic; dump trucks (including all highway and off-highway) 35 C.Y.W.L.C. and over; truck and trailer or semi-trailer (flatbed); eject all

**GROUP IX**  
Warehousemen including material checker; carbox man; lowboy (heavy equipment double gooseneck); heavy equipment mechanic; welder (body and fender men)

TEAMSTERS classifications not listed shall be paid a rate comparable to classifications listed.

FOUND INSTALLERS RATE DEFINITIONS

- ZONE I**  
Thirty mile radius of main post office of Albuquerque
- ZONE II**  
Remainder of Valencia, Sandoval, Santa Fe, Torrance, and Socorro Counties, the hourly rates of pay shall be increased to twelve and one-half (12½) percent of journeyman rate of pay for zone I.
- ZONE III**  
Chaves, Curry, Roosevelt, Lincoln, Guadalupe, DeBaca, Quay, San Miguel, Mora, Sardin, Union, Colfax, Taos, Rio Arriba, Catron, Sierra, Grant, Los Alamos, San Juan, McKinley Counties, the hourly rates of pay shall be increased by thirty-seven and one-half (37.5) percent of the journeyman rate of pay for zone I.

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
		H & W	Vacation	Pensions	
<b>GENERAL BUILDING CONSTRUCTION</b>					
<b>TRUCK DRIVERS:</b>					
Group 1	\$6.61	.57	.50	.50	
Group 2	6.73	.57	.50	.50	
Group 3	6.81	.57	.50	.50	
Group 4	6.93	.57	.50	.50	
Group 5	6.98	.57	.50	.50	
Group 6	7.08	.57	.50	.50	
Group 7	7.18	.57	.50	.50	
Group 8	7.32	.57	.50	.50	
Group 9	7.47	.57	.50	.50	
<b>TRUCK DRIVERS (RESIDENTIAL CONSTRUCTION)</b>					
Group 1	6.31	.57	.50	.50	
Group 2	6.43	.57	.50	.50	
Group 3	6.51	.57	.50	.50	
Group 4	6.63	.57	.50	.50	
Group 5	6.68	.57	.50	.50	
Group 6	6.78	.57	.50	.50	
Group 7	6.88	.57	.50	.50	
Group 8	7.02	.57	.50	.50	
Group 9	7.17	.57	.50	.50	
<b>TRUCK DRIVERS (HEAVY ENGINEERING CONSTRUCTION)</b>					
Group 1	6.76	.57	.50	.50	
Group 2	6.88	.57	.50	.50	
Group 3	6.96	.57	.50	.50	
Group 4	7.08	.57	.50	.50	
Group 5	7.13	.57	.50	.50	
Group 6	7.23	.57	.50	.50	
Group 7	7.35	.57	.50	.50	
Group 8	7.47	.57	.50	.50	
Group 9	7.62	.57	.50	.50	

DECISION NO. 8007-4074.

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a - Includes \$0.07 contribution to the Occupational Health Fund.  
b - 1st 6 months - none; 6 months to 5 years, 2%; over 5 years, 4% of basic hourly rate.

c - 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.

STATE: New Mexico COUNTY: Statewide  
 DECISION NO. NM 77-4077 DATE: Date of Publication  
 Supersedes decision No. 8076-4181 dated November 12, 1976 in 41 FR 40150  
 DESCRIPTION OF WORK: Highway, streets, roads, utilities, and light engineering construction consisting of construction of roads, highways, streets, alleys, sidewalks, guard rails, fences, parkways, parking areas, runways, bridge paths, athletic fields, (except structures), highways bridges, grade separation involving highways, earth dams under one million cubic yards, sewer and water lines and other utilities and work incidental thereto (does not include airport runways and taxiways, bridges over navigable waters, tunnels; rest areas which include building structures; and railroad construction.)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
		H & W	Pensions	Vacation		
<b>CARPENTERS:</b>						
Carpenters	\$5.11	.10	.20	.10	.04	
Power saw operator-saw filler	5.28	.10	.20	.10	.04	
Millerlight & piledriver	5.36	.10	.20	.10	.04	
CEMENT MASONS	4.94	.26				
Reinforcing Structural	4.28	.25	.75		.04	
PAINTERS:	7.99	.50				
Brush	4.37					
Spray	5.31					
<b>LABORERS:</b>						
Common laborer; carpenter tender; concrete buggy operator (hand); concrete workers	2.36	.20	.15			
Wagon, air track, drill and diamond drillers' tender (outside)	2.71	.20	.15			
Air & power tool man; asphalt raker; batching plant scaleman; tenderers (no cement masons and plasterer); chain sawman; concrete touch-up man; concrete saw man; curbing machine; asphalt or cement; cutting torchman; metal form setter-road; grade setter; bog carrier; mortar mixer & mason tender; powderman or blaster helper; scaler; sandblaster helper; vibrator compactor (hand type); vibrator-man(hand type); concrete power-buggyman	2.86	.20	.15			
Gumite pumpcreteman & mazzlemant	3.16	.20	.15			
multiplate setter	3.16	.20	.15			
Wagon; air track, drill and diamond driller (outside)	2.86	.20	.15			
Machole builder	3.36	.20	.15			
Pipelayer	3.16	.20	.15			
Powderman-blaster-make up	3.31	.20	.15			

Basic Hourly Rates	Fringe Benefits Payments				Education and/or App. Tr.
	H & W	Pensions	Vacation		
\$4.74	.15	.10			.01
Concrete paving curing machine Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving sub grader	5.52	.15	.10		.01
Belt type conveyors (material & concrete), broom (self-propelled) fork lift, grease truck op.; head roller, hydro lift, tractor (under 50 drawbar H.P. with attachment)	4.94	.15	.10		.01
Tractor with backhoe attachment	5.49	.15	.10		.01
Subgrade or base finisher	5.52	.15	.10		.01
Concrete slip-form paving machine asphalt distributor, asphalt paving, or lay down machine, asphalt retort heater, batch of continuous mix plant (concrete, soil-cement or asphalt), mixer, heavy duty, asphalt or soil cement, motor grader, tractor	5.74	.15	.10		.01
50 drawbar H.P. or over) trenching machine, clam type shaft mucker	5.54	.15	.10		.01
Concrete paving finishing machine, concrete paving longitudinal float, gunnite machine, jumbo form or drilling stage slusher	5.74	.15	.10		.01
Concrete paver mixer, hoist (2 drums & over) side boom Derrick, cableway	5.69	.15	.10		.01
Traveling crane, piledriver	6.12	.15	.10		.01
Mine hoist & mucking machine	5.69	.15	.10		.01
Backhoe, clamshell, dragline, Grapple, shovel	5.89	.15	.10		.01
Under 3/4 cubic yard - 3/4 cubic yard	5.34	.15	.10		.01
Over 3 cubic yard	5.69	.15	.10		.01
	5.89	.15	.10		.01



Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$5.54	.15	.10		.01
5.69	.15	.10		.01
5.74	.15	.10		.01
5.74	.15	.10		.01
5.54	.15	.10		.01
5.69	.15	.10		.01
5.89	.15	.10		.01
5.54	.15	.10		.01
4.94	.15	.10		.01
5.54	.15	.10		.01
5.69	.15	.10		.01
4.94	.15	.10		.01
5.57	.15	.10		.01
5.69	.15	.10		.01
5.74	.15	.10		.01
5.69	.15	.10		.01
4.94	.15	.10		.01
7.19	.15	.10		.01
7.19	.15	.10		.01
6.39	.15	.10		.01

POWER EQUIPMENT OPERATORS (CONT.)

Bulldozer, elevating grader or belt loader, roller (steel-wheel), scraper operator  
 Bulldozer (multiple units)  
 scraper (multiple units)  
 Concrete paving spreader  
 Pumpscrete machine  
 Cranes (crawler or mobile):  
 Under 20 ton  
 20 tons to 40 ton  
 Over 40 ton  
 Air compressor (300 CFM & over)  
 crushing screening & washing plants, drilling machine (cable core or rotary), mixer concrete (1 cy & less), pump (6" intake or over), winch truck, hoist (1 drum), industrial locomotive, motorman, lumber stacker  
 Front end loader:  
 1-1/2 cy or less  
 Over 1-1/2 cy to 5 cy  
 Over 6 cy  
 Industrial locomotive brakeman  
 Tractor (under 50 drawbar HP without attachments), fireman oiler, screedman  
 Mechanic and/or welder  
 Mixer, concrete (over 1 cy)  
 Grout pump operator  
 Power plant (electrical generator or welding machine)  
 Roller (roll type)  
 Maching machine, roller (self-propelled)  
 Mile operator  
 Pipemobile operator  
 Belt loader (CMI type operator);  
 pipemobile operator assistant

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$4.57	.26			
4.65	.26			
4.36	.26			
4.46	.26			
4.60	.26			
4.65	.26			
4.88	.26			
4.36	.26			
4.51	.26			
4.39	.26			
4.98	.26			
4.60	.26			
4.63	.26			
4.21	.26			
4.25	.26			
4.30	.26			
4.54	.26			
4.17	.26			
4.44	.26			
4.54	.26			
4.64	.26			
4.17	.26			
4.73	.26			
4.60	.26			
4.35	.26			
9.65	.60	13+.60		1/21
9.00	.60	13+.60		1/21
8.58	.60	13+.60		1/21
7.88	.60	13+.60		1/21
4.88	.60	13+.60		1/21
5.51	.60	13+.60		1/21
6.36	.60	13+.60		1/21

TRUCK DRIVERS:  
 Distributor (asphalt)  
 Dumpster or dumper  
 Dump or batch truck:  
 Under 8 cy  
 8 cy and under 16 cy  
 16 cy and under 20 cy  
 20 cy and over  
 Diesel-powered transport (non-self-loading) 10 yrs. and over  
 Flatbed:  
 1-1/2 ton  
 Over 1-1/2 ton  
 Lumber carrier  
 Lowboy, heavy equipment  
 Lowboy, light equipment  
 Off-highway hauler  
 Pick-up truck 3/4 ton or under  
 Service station attendant  
 Spreader box  
 Spreader box (self-propelled)  
 Swapper or rider helper  
 Tank Trucks:  
 3,000 gal. or under  
 3,001 gal. to 6,000 gal.  
 6,001 gal. & over  
 Teamster, 2 or 4 or more  
 Trailer or semi-trailer dump  
 Transit mix  
 Warehousemen  
 LINE CONSTRUCTION (BERNALILLO CO.)  
 Cable splicers  
 Linemen-Technicians  
 Equipment operators  
 Equipment mechanics-Powdermen  
 Groundmen & Jackhammer Operators  
 1st 6 months  
 2nd 6 months  
 Experienced

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$10.51	.60	15+.60		1/22
9.82	.60	15+.60		1/22
9.35	.60	15+.60		1/22
9.58	.60	15+.60		1/22
9.58	.60	15+.60		1/22
5.31	.60	15+.60		1/22
5.99	.60	15+.60		1/22
6.96	.60	15+.60		1/22

LINE CONSTRUCTION (STATEWIDE EXCEPT BERNALILLO COUNTY):  
 Cable splicers  
 Linemen-Technicians  
 Equipment operators  
 Equipment mechanics  
 Powderman  
 Groundman & Jackhammer operators:  
 1st 6 months  
 2nd 6 months  
 Experienced

SUPPLEMENTAL DECISION

STATE: Pennsylvania  
 COUNTY: Lebanon  
 DECISION NO.: PA77-3031  
 DATE: Date of Publication  
 Supersedes Decision No. PA76-3176, dated June 18, 1976, in 41 FR 24653.  
 DESCRIPTION OF WORK: Building Construction, (excluding single family home and garden type apartments up to and including 4 stories)

DECISION NO. PA77-3031

Faltermers (West of Route 72)

	Basic Hourly Rate	Fringe Benefits Payments				App. Tr.	Others
		H & W	Pensions	Vacation	App. Tr.		
Asbestos workers	\$10.11	.52	.70		.01		
Rollermakers	12.05	.75	1.00		.02		
Bricklayers	9.60	.60	.48				
Carpenters	9.50	.35	.40		.03		
Cement masons	9.365	.50	.40				
West of Rte. 501	9.69		.50				
East of Rte. 501							
Electricians:							
Lebanon, East Hanover & Indiantown Gap	9.91	.45	.32+.31		1/4 %		
Military Reservation	9.00	.45	.31		1/22		
Remainder of County	10.20	.545	.35	4%+5+c	.02		
Elevator constructors' helpers	7.14	.545	.35	4%+5+c	.02		
Elevator constructors' helpers (prob.)	5.10						
Glassblowers							
Types. of Bethel, Jackson, Mill Creek, Lebanon, E. of Rte. 72, Heidelberg & Richland	8.89	.40	.30		.01		
Remainder of County	8.09	.25	.30		.03		
Ironworkers	10.63	.84	1.24				
Labors:	6.55	.25	.25				
Labors, unskilled							
Air fuel & Electric tool operators, pipelayers, power-buggy, pre-cast slab placers & signalman, Brick, stone, plasterers & cement mason tenders, machine mixers, stockers, scaffold builders, plaster pump & conveyors, blasters, calisson workers, wagon air truck & diamond point drill operators, burning torches, green cutting machine, steam jenny & blast-	6.65	.25	.25		.01		
ing	9.83	.15	.15		.01		
Lead burners	10.75	.40	.25				
Line Constructors:							
Linemen & Cable splicers	10.88	.25	.11		3/42		
Groundsmen	6.51	.25	.11		3/42		
Winch truck operator	7.60	.25	.11		3/42		
Marble setters	9.60	.60	.48				
Millwrights	10.61	.35	.40		.03		
Painters (East of Route 72)							
Brush	8.40	.60	.45				
Structural steel & Spray	9.45	.60	.45				
Highway bridges	9.85	.60	.45				

	Basic Hourly Rate	Fringe Benefits Payments				App. Tr.	Others
		H & W	Pensions	Vacation	App. Tr.		
Brush	\$ 8.23	.26	.24				
Structural steel	9.68	.26	.24				
Spray	8.98	.26	.24				
Piledrivers	10.42	1.88	1.30		.12		
Flasterers							
East of Rte. 501	9.71	.25	.25		.01		
West of Rte. 501	9.05				.01		
Finbers:							
East of Rte. 501	11.01	.67	1.45		.11		
West of Rte. 501	10.45	.30	.65		.12		
Roofers:							
Anville, Cold Springs, East Hanover, North Anville, North Cornwall, North Londonderry, South Anville, South Londonderry, Union, West Cornwall	9.71	.60	.55				
Types:							
Compositions							
Remainder of County	10.60	.45	.25		.08		
Composition, damp & Waterproofing	11.01	.67	1.45		.03		
Steamfitters (East of Rte. 501)	9.76	1.17	1.03		.03		
Sheet metal workers	8.63	.35	.40		.03		
Soft floor layers	10.45	.30	.65		.12		
Steamfitters (West of Rte. 501)	11.51	.60	.90		.08		
Sprinkler fitters	9.60	.60	.48				
Stonemasons	8.375	.50					
Terrazzo workers	8.375	.50					
Tile setters							
Truck Drivers:							
Pick-up, dump, flat trucks to & including 2 highway license plates	7.59	d	e				
Transit-mix, Winch, trucks, tractor trailers, all types Buclids, Ross lumber carriers & trucks over 2 plates	7.84	d	e				
Welders - receive prescribed for craft ferrif,ong operation to which welding is incidental							

**PAID HOLIDAYS:**

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

**FOOTNOTES:**

- a. 8 paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is available for work the days preceding and following the holiday.
- b. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
- c. Six paid holidays: A through F.
- d. \$58.37 per month for employees who have worked sixty hours or more during the month.
- e. \$33.67 per month for employees who have worked sixty or more hours during the month.
- f. Paid holidays: Election Day and Labor Day.

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GROUP	Basic Hourly Rate	Fringe Benefits Payments			App. T.
		W & V	Residence	Vacation	
GROUP 1	\$11.60	5.5%	9.5%	a	1.2%
GROUP 2	11.31	5.5%	9.5%	a	1.2%
GROUP 3	10.44	5.5%	9.5%	a	1.2%
GROUP 4	9.67	5.5%	9.5%	a	1.2%
GROUP 5	9.20	5.5%	9.5%	a	1.2%
GROUP 6	8.29	5.5%	9.5%	a	1.2%
GROUP 7	11.85	5.5%	9.5%	a	1.2%
GROUP 7-A	12.10	5.5%	9.5%	a	1.2%
GROUP 7-B	12.34	5.5%	9.5%	a	1.2%

**CLASSIFICATIONS DEFINITIONS**

- GROUP 1:** Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above
- GROUP 2:** All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of sheaves, derricks, trench shovels, trenching machines, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) grallies, marking machines in tunnel, all front end loaders 3- $\frac{1}{2}$  c.y. and over, tandem scrapers, pipin type backhoes, boat Cap-tains, batch plant operators (concrete) drills, self-contained rotary drills, fork lift, 20 ft lift and over machine to the above
- CLASS 3:** Conveyors, building hoists (single drum) scrapers and tounspalls, spreaders, high or low pressure boilers, concrete pumps, wall drillers, bulldozers and tractors, asphalt plant engines, roller (high grade finishing), ditch witch type trencher, all loaders under 3- $\frac{1}{2}$  cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft lift, machines similar to the above
- GROUP 4:** Welding machines, well points, compressors, pumps, beaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power broom, seeding spreader, tireman (for power equipment), machines similar to the above
- GROUP 5:** Fireman, grease truck
- GROUP 6:** Oilers and deck hands (personnel boats), core driller helper
- GROUP 7:** All machines with booms (including jib, masts, leads, etc.):  
100 Ft and over
- GROUP 7A:** 150 ft. and over
- GROUP 7B:** 200 ft. and over
- FOOTNOTES:**
- a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

STATE: Wisconsin  
 COUNTY: Statewide  
 DECISION NUMBER: W177-2042  
 DATE: Date of Publication  
 SUPERSEDES Decision No. W176-2045, dated April 16, 1976 in 41 FR 16425.  
 DESCRIPTION OF WORK: Heavy, Sewer, Tunnel & Water Construction.

DECISION NO. W177-2042

BRICKLAYERS & STONEMASONS:

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vocations	
\$ 9.19	.55	.25		.03
8.05	.55	.35	.55	
8.05	.55	.35	.55	
9.63	.45	.25	.25	.01
9.05	.40	.25		
10.05	.50	.50	.50	
8.80	.55	.60	.50	
10.24	.97	.70	.56	.05
9.60	.55	.30		
10.05	.50	.50	.50	
9.56	.45	.45		.01
9.65	.55	.25		
8.80	.45	.25		

ZONE 1 - BARBON, BUFFALO, CHEPPONA, DONN, EAU CLAIRE, PEPIK, PIERCE, POLK, RUSK, ST. CROIX, & SAWYER COUNTIES, BURNETT County South of Hwy. 70 including the City of Grantburg the Northern 1/4 of TRUMBULL County, and the Southern 1/4 of WASHINGTON County  
 ZONE 2 - FOND DU LAC County  
 ZONE 3 - BROWN, CALUMET, DOOR, FLORENCE, GREEN LAKE, KENOSHA, MARINETTE, MARQUETTE, OCONTO, OTCAGAMIE, WAUPACA, WASHBURN, & WINNEBAGO Counties and all of SEAWANO County except the North West peninsula  
 ZONE 4 - GREEN, LAFAIETTE & ROCK Counties  
 ZONE 5 - CRAWFORD, JACKSON, JUREAU, LA CROSSE & VERDON Counties and the remainder of TRUMBULL County  
 ZONE 6 - WALKORTE County  
 ZONE 7 - DANE, GRANT, IOWA & RICELAND COUNTIES  
 ZONE 8 - MILWAUKEE, OSAUGUE, WASHINGTON & WAUKESHA COUNTIES  
 ZONE 9 - COLUMBIA & SAUK Counties  
 ZONE 10 - KENOSHA & RACINE Counties  
 ZONE 11 - ASHLAND, RAIFIELD, DOUGLAS & IRON Counties and the remainder of BURNETT & WASHBURN Counties  
 ZONE 12 - DOUG & JEFFERSON Counties  
 ZONE 13 - ADAMS, CLARK, FOREST, LANGLADE, LINCOLN, MAPATSON, MEMMINGER, ONEIDA, PORTAGE, PRICE, TAYLOR, VILAS & WOOD Counties and the remainder of SEAWANO County

CARPENTERS & PILEDRIVERS  
 ZONE 1 - ASHLAND & IRON Counties and the East 1/4 of BAYFIELD CO. Carpenters  
 ZONE 2 - BARBON, BURNETT, CHEPPONA, DONN, EAU CLAIRE, PEPIK, PIERCE, POLK, RUSK, SAWYER & WASHBURN Counties the North 1/4 of BUFFALO, JACKSON & TRUMBULL Counties, CLARK County, West of Hwy. 73 & TAYLOR Co. West of Hwy. 73 & North of Hwy. 64 to Hwy. 13 to PRICE County Line Carpenters  
 ZONE 3 - BROWN, CALUMET, DOOR, FOND DU LAC, GREEN LAKE, KENOSHA, MARINETTE, MARQUETTE, MEMMINGER, OCONTO, OTCAGAMIE, SEAWANO, WAUPACA, & WASHBURN Counties & the South 1/4 of MARINETTE County Carpenters  
 ZONE 4 - GREEN & ROCK Counties & JEFFERSON County South of Hwy 30 Carpenters  
 ZONE 5 - KENOSHA County Carpenters  
 ZONE 6 - LA CROSSE, MONROE & VERDON Counties, the remainder of BUFFALO, JACKSON & TRUMBULL Counties & in JUREAU County, West of County tract 80 & South of Hwy. 21 Carpenters  
 Piledrivers

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vocations	
\$ 7.54	.30	.25	.15	
7.74	.30	.25	.15	
9.20	.30	.40		.03
9.60	.30	.40		.03
8.82	.30	.40		.03
9.22	.30	.40		.03
9.86	.30	.40		.03
10.01	.30	.40		.03
9.85	.40	.60		.04
9.93	.40	.60		.04
8.82	.30	.40		.03
9.22	.30	.40		.03

DECISION NO. W177-2042

CEMENT MASONS

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
\$ 8.74	.45	.45	.45	.03
9.29	.45	.25	.25	.01
8.30	.45	.25	.25	.01
9.29	.42	.25	.25	.03
7.55	.55	.35	.55	.05
8.53	.45	.25	.25	.05
7.55	.55	.35	.55	.05
7.55	.55	.35	.55	.05
9.15	.55	.25	.25	.05
8.55	.45	.40	.40	.25
9.34	.50	.70	.70	.51
9.35	.45	.40	.40	.40
9.28	.40	.40	.40	.40
9.06	.40	.40	.40	.40
8.33	.40	.50	.50	.50
8.33	.40	.50	.50	.50

ZONE 1 - ASHLAND, BAYFIELD, DOUGLAS & IRON Counties & the North 1/2 of BURGETT & WASSBURG Counties  
 ZONE 2 - BARBON, CHIPPEWA, DUNN, FOLEY, FOSH, ST. CROIX, & SHAYER Counties and the remainder of BURNETT & WASSBURG Counties  
 ZONE 3 - ADAMS, CLARK, FOREST, LANGLADE, LINCOLN, MARATHON, MENOMINEE, ONEIDA, PORTAGE, PRICE, TAYLOR, VILAS & WOOD Counties and the Northwest panhandle of SEAWANO County  
 ZONE 4 - SAU CLAIRE, PEPIN & PIERCE Counties & the North 1/2 of BUFFALO, JACKSON & TREMPEREAU Counties  
 ZONE 5 - BROOK, CALUMET, DOOR, FLORENCE, GREEN LAKE, KESHONNEE, MANITOWOC, MARINETTE, MARQUETTE, OCCONTO, OTTAGAMIE, WAUPACA, WAUSHAWA & WINNEBAGO Counties and the remainder of SEAWANO County  
 ZONE 6 - CHAMFORD, JUNEAU, LA CROSSE, MONROE, RICHLAND & VERDON Counties & the remainder of BUFFALO, JACKSON & TREMPEREAU Counties  
 ZONE 7 - SEBORGAN COUNTY  
 ZONE 8 - FOND DU LAC County  
 ZONE 9 - DOGEE & JEFFERSON Cos. Counties  
 ZONE 10 - COLUMBIA & SAUK Counties  
 ZONE 11 - MILWAUKEE, OZAUQUE, WASHINGTON & WAUSHAWA Counties  
 ZONE 12 - DARE, GREEN, IOWA, LAFAYETTE & ROCK Counties  
 ZONE 13 - GRANT County  
 ZONE 14 - WALFORTH County  
 ZONE 15 - RACINE COUNTY  
 ZONE 16 - KENOSHA County

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CARPENTERS & PILEDRIEVERMEN (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
9.37	.30	.40	.40	.03
9.77	.30	.40	.40	.03
8.74	.60	.50	.50	.01
8.94	.60	.50	.50	.01
9.76	.80	.70	.51	.03
10.21	.80	.70	.51	.03
9.95	.40	.50	.50	.03
10.03	.40	.50	.50	.03
8.85	.40	.30	.30	.04
9.54	.40	.30	.30	.04
9.05	.30	.40	.30	.04
9.05	.30	.40	.30	.04
9.86	.30	.40	.40	.04
10.01	.30	.40	.40	.04
8.82	.30	.40	.40	.03
9.22	.30	.40	.40	.03

ZONE 7 - CHAMFORD, COLUMBIANA, DARE, DOGEE, GRANT, IOWA, LAFAYETTE, RICHLAND & SAUK Counties and the remainder of ADAMS, JEFFERSON AND JUNEAU Counties  
 Carpenters  
 Piledrivermen  
 ZONE 8 - FLORENCE County & the remainder of MARINETTE County  
 Carpenters  
 Piledrivermen  
 ZONE 9 - MILWAUKEE, OZAUQUE, WASHINGTON & WAUSHAWA Counties  
 Carpenters  
 Piledrivermen  
 ZONE 10 - RACINE County East of Highway 75  
 Carpenters  
 Piledrivermen  
 ZONE 11 - SEBORGAN County  
 Carpenters  
 Piledrivermen  
 ZONE 12 - DOUGLAS County & the West 1/2 of BAYFIELD County  
 Carpenters  
 Piledrivermen  
 ZONE 13 - WALKORTE County and RACINE County West of Hwy. 75  
 Carpenters  
 Piledrivermen  
 ZONE 14 - FOREST, LANGLADE, LINCOLN, MARATHON, ONEIDA, PORTAGE, PRICE, VILAS & WOOD Counties and the remainder of ADAMS, CLARK, JUNEAU & TAYLOR Counties  
 Carpenters  
 Piledrivermen

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ELECTRICIANS:

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
<p>ZONE 1 - OUTAGAMIE, WAUPACA, WAUSAHA &amp; WINNEBAGO Counties; All of CALUMET County except the Township of New Ralston; Berlin St. Marie and Seneca Townships in GREEN LAKE County, and Crystal Lake, Meshkoro, Newton and Springfield Townships in MARQUETTE County</p> <p>\$ 10.43</p>	.60	18			
<p>ZONE 2 - BARABOON, CHIPPEWA, CLARK, DORN, EAU CLAIRE, FEPIN, PIERCE, POLA, RUSH &amp; TAYLOR Cos. in BUFFALO Co. that portion North of Glencoe, Milton &amp; Wauwadee Tps., in RUSHVILLE Co., that portion South of Lincoln, Weston, Rush, Sand Lake and West Marchland Tps., in JACKSON County that portion North of Adams, Allison &amp; Springfield Tps., All of PIERCE County except Eisenstein, Tiffield and Lake Tps., All ST. CROIX County except Hudson, St. Joseph, Somerset &amp; Troy Tps., in SAWYER County the Tps. of Edge-water, Meadowrock, Meteor &amp; Waigoo &amp; South thereof, in TRINIDAD Co. the Tps. of Burnside, Lincoln &amp; Zigeon North thereof; in WASHINGTON CO. The Tps. of Buck wood, Evergreen, Madge &amp; Spooner &amp; South thereof</p> <p>10.35</p>	48	18		.258	
<p>ZONE 3 - BROWN, DOOR AND Kewaunee Counties; in Oconto County, that portion South of Bow, Leno, Mable Valley, Oconto &amp; Spruce Tps.; &amp; in Shawano County that portion South of Ahoiv &amp; Butchins Tps.</p> <p>10.26</p>	.52	18		1/88	

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ELECTRICIANS (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
<p>ZONE 4 - FLORENCE &amp; FOREST Cos. and that portion of MARINETTE County North of Aabest Abetstane &amp; Silver Cliff Tps.</p> <p>10.63</p>	.40	18			.508
<p>ZONE 5 - KENOSHA County</p> <p>11.34</p>	.45	18	.25		.758
<p>ZONE 6 - CRAWFORD, GRANT, JUNEAU, LA CROSSE, MONROE, RICHLAND &amp; VERMILION Cos. &amp; the remainder of BUFFALO, JACKSON &amp; TRINIDAD Counties</p> <p>10.40</p>	.55	18			.258
<p>ZONE 7 - WALWORTH County</p> <p>10.20</p>	.45	18	78		
<p>ZONE 8 - COLUMBIA, DANE, DODGE, IOWA &amp; SAUK Counties &amp; the remainder of GREEN LAKE &amp; MARQUETTE Counties</p> <p>9.95</p>	.74	18	78		.75
<p>ZONE 9 - SHEBOYGAN County the remainder of CALUMET County and Schleswig Township in MANITOWOC County</p> <p>9.19</p>	.85	18+20	108		188
<p>ZONE 10 - ASHLAND, BAYFIELD, DOUGLAS &amp; IRON &amp; the remainder of BURNETT, FRICK, SAWYER &amp; WASHINGTON Counties</p> <p>10.15</p>	48	18	118		38
<p>ZONE 11 - LANGLADE, LINCOLN, MARATHON, ONEIDA &amp; VILAS Cos.; the remainder of SHAWANO Co. &amp; all of MEMPHIS West of a line six miles West of Oconto County line</p> <p>9.60</p>	.45	18	78		1/88
<p>ZONE 12 - ADAMS PORTAGE &amp; WOOD Counties</p> <p>9.60</p>	.45	18	78		1/88
<p>ZONE 13 - FOND DU LAC County</p> <p>9.19</p>	.85	18+20	108		1.258
<p>ZONE 14 - GREEN, JEFFERSON LA FAYETTE, &amp; ROCK Counties</p> <p>10.20</p>	.45	18	78		.508
<p>ZONE 15 - RACINE County</p> <p>11.48</p>	.55	18			.758
<p>ZONE 16 - MILWAUKEE, OLAHUSKA, WASHINGTON &amp; WASSICHA Cos.</p> <p>10.56</p>	.85	18+20	108		1.258
<p>ZONE 17 - The remainder of MARINETTE, MEMPHIS &amp; OCONTO Counties</p> <p>10.26</p>	.52	18			1/818
<p>ZONE 18 - The remainder of MANITOWOC County</p> <p>10.26</p>	.52	18			1/818

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IRONWORKERS (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
	H & W	Pensions	Vocatio	
\$10.66	.95	.70	1.15	.15
11.875	.65	.375		.05
8.84	.35	18		.51
9.65	.35	18		.51
7.33	.35	18		.51
6.09	.35	18		.51
5.55	.35	18		.51
4.80	.35	18		.51
5.81	.35	18		.51
9.00				
9.50				
8.15			51	
8.65			51	
8.40			51	

ZONE 4 - BROWN, CALUMET, DOOR, KENOSHA, KENAUWEE, MANITOWOC, WALESKA, MILWAUKEE, OLAUKER, RACINE, SHEBOYGAN, WASHINGTON, & WALKESHA Counties; the remainder of DODGE, FLORENCE, FOND DU LAC, JEFFERSON, OCOINTO, OUTAGAMIE & SHAWANO Cos.; & the East 1/2 of WALWORTH

ZONE 5 - The remainder of GREEN, ROCK & WALWORTH Counties

LINE CONSTRUCTION

Linemen  
Cable Splicer  
Equipment Operator  
Truck Drivers with Boom, Jigger, Tractor or 5thwheel  
Groundman  
Groundman 1st 6 months  
Truck Drivers

PAINTERS:

ZONE 1 - LANGLADE, LINCOLN, MENOMINEE, ONEIDA & PRICE Counties The West 3/4 of FOREST County; In MARATHON Co. West of Hwy. 97 & South to Hwy. 151 & TAYLOR County North of Hwy. 64  
Brush  
Spray

ZONE 2 - BARSON, BUFFALO, BURDETTE, CHIPPEWA, DUNN, EAU CLAIRE, FEFIN, PRICE, POLK, ROSK, ST. CROIX, SAWYER, TREMPEREAU & WASHBURN Counties  
Brush  
Spray  
Steel

DECISION NO. W177-2042

IRONWORKERS

Basic Hourly Rates	Fringe Benefits Payments			Education and/or App. Tr.
	H & W	Pensions	Vocatio	
\$ 10.35	.55	.55		.02
10.60	.30	.55		.02
10.22	.50	.25		.03

ZONE 1 - BARSON, BUFFALO, CHIPPEWA, DUNN, EAU CLAIRE, FEFIN, FRENCH, POLK, ST. CROIX & TREMPEREAU Counties; the South-West 1/2 of BURNETT, RUSK & TAYLOR Counties; & the N. W. 1/4 of CLARK & JACKSON Counties

ZONE 2 - ASHLAND, BAYFIELD, DOUGLAS, IRON, LINCOLN, ONEIDA, PRICE, SAWYER, VILAS, WASHBURN Counties; the remainder of BURNETT, RUSK & TAYLOR Counties THE N. W. 1/4 of FOREST COUNTIES AND THE N. W. 1/3 of FLORENCE County

ZONE 3 - ADAMS, COLUMBIA, CRAWFORD, DANE, GRANT, GREEN LAKE, IOWA, JUNEAU, LA CROSSE, LAFAYETTE, LANGLADE, MARATHON, MAQUETTE, MENOMINEE, MONROE, PORTAGE, RICHLAND, SAUK, VERNON, WAUPACA, WAUSARA, WINNEBAGO, & WOODS Counties; the remainder of CLARK FOREST, & JACKSON Counties; the West 2/3 of DODGE & SHAWANO Counties the West 1/2 of FOND DU LAC Co. all of GREEN County except the South-East corner; all of JEFFERSON County except the extreme Eastern portion; the West 1/3 of OUTAGAMIE County; the Townships of Bogertown, Evansville, Milton & Polesville in ROCK County & the North-West corner of WALWORTH County including the town of Whitewater.



DECISION NO. W177-2042

PAINTERS (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
8.50	.30	.10		.03
9.00	.30	.10		.03
8.65	.40	.40		
8.80	.40	.40		
9.40	.40	.40		
6.35	.20	.30	.30	
6.75	.20	.30	.30	
9.00				
9.50				

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
7.95	.60			
8.35	.60			
7.45		.40	.75	
7.45		.40	.75	
8.575	.40	.40		
8.725	.40	.40		
9.32	.40	.40		
7.78		.45		
8.05		.45		
8.47		.45		
8.575	.40	.40		
8.725	.40	.40		
9.32	.40	.40		
8.79	.60	.30	.30	.01
9.54	.60	.30	.30	.01
7.55				
8.05				
6.70		.45	.45	
7.20		.45	.45	
9.10	.78	.70	.50	.02
9.45	.78	.70	.50	.02

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PAINTERS (CONT'D)

ZONE 3 - BROWN, DOOR, EDNAUNEE, & OCONTO Counties
Brush
Spray
ZONE 4 - FLORENCE Co. & the Northern 1/4 of MARINETTE Co.
Brush
Steel
ZONE 5 - KENOSHA COUNTY
Brush
Steel
ZONE 6 - ADAMS, CLARK, CRAMFORD, JACKSON, JUNEAU, LA CROSSE, MONROE, PORTAGE, VERNON & WOOD Counties; & the remainder of MARATHON & TAYLOR COUNTIES
Brush
Steel
Spray
ZONE 7 - WALWARTHE County
Brush
Steel
Spray
ZONE 8 - COLUMBIA, DANE, DOGGS, GRANT, GREEN, IOWA, LAFAYETTE, RICHLAND, ROCK & SAUK Counties
Brush
Spray
ZONE 9 - MANITOWOC County & the South 1/4 of Calumet County
Brush
Spray and Steel
ZONE 10 - The remainder of MARINETTE & FOREST Counties
Brush
Spray
ZONE 11 - JEFFERSON, MILWAUKEE, OLAUKEE, WASHINGTON & WAUKESHA Counties
Brush
Steel and Spray

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LABORERS, SENIOR, TUNNEL & MINTER  
(CONT'D)

ZONE 2 - DANE COUNTY

GROUP 1 - Laborer, wellpoint installation, wire mesh & reinforcement, concrete worker, form stripper, strike-off worker  
GROUP 2 - Machine & equipment op., sheeting, formsetting, patch-finisher, bottomman, jointtaker, gunnite man, manhole builder, welder, torchman, blaster, caulker, bracer, bull float, conduit worker, all power driven tools, mucker, car pusher, raker, leteman  
GROUP 3 - Pipelayer, miner, laser operator  
ZONE 3 - COLUMBIA, IOWA, SAUK, & the North 1/2 of JEFFERSON Counties

Group 1 - Laborers, wellpoint installation wire mesh & reinforcement, concrete worker, form stripper, strike-off worker  
GROUP 2 - Machine & Equipment op., sheeting, form setting, patch finisher, bottomman, joint sewer, gunnite man, manhole builder, welder, torchman, blaster, caulker, bracer, bullfloat, conduit worker, all power driven tools, mucker, car pusher raker, leteman  
GROUP 3 - Pipelayer, miner, laser operator

ZONE 4 - BAYFIELD, BURNETT, DOUGLAS, IRON, SAWYER, & WASHBURN Counties  
GROUP 1 - Topgas

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
8.05	.30	.30	.30	.02
8.25	.30	.30	.30	.02
8.60	.30	.30	.30	.02
7.35	.30	.30	.30	.02
7.55	.30	.30	.30	.02
7.90	.30	.30	.30	.02
7.90	.30	.30	.30	.02

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LABORERS, SENIOR, TUNNEL & MINTER  
(CONT'D)

GROUP 7 - Blaster  
TUNNEL-FREE AIR  
GROUP 8 - Tower man, general laborer on surface  
GROUP 9 - Saw man, top man  
GROUP 10 - Form stripper, car pusher  
GROUP 11 - Mucker, mocking machine, dinky, welder on surface  
GROUP 12 - Concrete manhole builder, concrete buster, jack hammer op., rock drill, caisson workers, caulker, joint man, pipe yarner, brace man, on gunnite, timber man, concrete brusher  
GROUP 13 - Miner, mining machine welder in tunnel  
GROUP 14 - Blaster  
TUNNEL COMPRESSED AIR  
GROUP 15 - Welder on surface  
GROUP 16 - Lock tender on surface  
GROUP 17 - Form stripper, car pusher  
GROUP 18 - Mucker, mucking machine, dinky  
GROUP 19 - Lock tender in tunnel concrete buster, jack hammer, rock drill, caisson worker, pipe layer, caulker, joint man, pipe yarner, brace man, nozzle man on gunnite, timber man, concrete brusher  
GROUP 20 - Miner, Mining machine welder in tunnel  
GROUP 21 - Blaster

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
9.59	.70	.70	.50	
8.82	.70	.70	.50	
8.87	.70	.70	.50	
9.04	.70	.70	.50	
9.14	.70	.70	.50	
9.43	.70	.70	.50	
9.53	.70	.70	.50	
9.59	.70	.70	.50	
9.14	.70	.70	.50	
9.45	.70	.70	.50	
9.54	.70	.70	.50	
9.64	.70	.70	.50	
9.81	.70	.70	.50	
9.91	.70	.70	.50	
9.98	.70	.70	.50	

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LABORERS, SENEC, TUNNEL & WATER (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Penless	Vacation	
7.35	.30	.30	.30	.02
7.55	.30	.30	.30	.02
7.90	.30	.30	.30	.02

ZONE 8 - Remainder of State  
 GROUP 1 - Laborer, wellpoint inst., wire mesh & reinforcement  
 GROUP 2 - Mach. & Equipment Op., Sheeting, formsetting patch-finisher, bottomman, jointlayer, gunnite man, man builder, air or electric tool op., welder, torchman, blaster, caulker, bracer  
 GROUP 3 - Pipelayer, laser op. Tunnel work, 15 additional

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LABORERS, SENEC, TUNNEL & WATER (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Penless	Vacation	
8.05	.30	.30	.60	
8.15	.30	.30	.60	
8.35	.30	.30	.60	
7.80	.40	.60	.60	
8.15	.40	.60	.60	
8.50	.40	.60	.60	
7.80	.40	.60	.60	
8.15	.40	.60	.60	
8.50	.40	.60	.60	
7.35	.30	.30	.60	.02
7.55	.30	.30	.60	.02
7.90	.30	.30	.60	.02

ZONE 5 - KENOSHA County  
 GROUP 2 - Bracer builder, caulker bottomman  
 GROUP 3 - Cement manhole, shielder pipelayer, air or electric tool operator  
 GROUP 4 - Blaster  
 ZONE 6 - RACINE County  
 GROUP 1 - Topman  
 GROUP 2 - Bracer, builder, caulker, pipelayer, bottomman, air or electric tool operator  
 GROUP 3 - Blaster, cement manhole builder  
 ZONE 7 - ASHLAND County  
 GROUP 1 - Laborer, wellpoint inst., wire mesh & reinforcement  
 GROUP 2 - Mach. & Equipment Op., sheeting, formsetting, patch finisher, bottomman, jointlayer, gunnite man, manhole builder, welder, torchman, blaster, caulker, bracer, bull float, combit worker, all power driven tools, mucker, car pusher, raker and lutenan  
 GROUP 3 - Pipelayer, miner and laser operator

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TRUCK DELIVERS	Fringe Benefits Payments			Education and/or Appr. Tr.
	Basic Hourly Rates	H & W	Pensions	
ZONE 1				
GROUP 1	\$ 7.89	24.50a	25.00a	c.35
GROUP 2	8.04	24.50a	25.00a	c.35
ZONE 2				
GROUP 1	7.89	110.04b	25.00a	c.35
GROUP 2	8.04	110.04b	25.00a	c.35
ZONE 3				
GROUP 1	7.89	106.15b	25.00a	c.35
GROUP 2	8.04	106.15b	25.00a	c.35

ZONE 1 - MILWAUKEE, OLAUKEE, WASHINGTON & WAUKESHA Counties  
 ZONE 2 - KENOSHA & RACINE Counties  
 ZONE 3 - Remainder of State

CLASSIFICATION IDENTIFICATION

GROUP 1 Truck Driver, 2 axle trucks - Mechanics helpers, truck  
 GROUP 2 Truck driver, 3 or more axle trucks - Euclid or dumpster type hauling units - Mechanic, truck

FOOTNOTES:

- a. Per week per employee on payroll 30 days or longer.
- b. Per month per employee on payroll 30 days or longer.
- c. \$.25 per hour vacation and \$.10 per hour for holiday pay.

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DECISION NO. W177-2042

POWER EQUIPMENT OPERATORS  
 Heavy, Tunnel & Sewer  
 Construction

Area 1 - Kenosha, Milwaukee,  
 Okauchee, Racine, Washington  
 & Waukesha Counties

GROUP	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
GROUP 1	10.02	.70	.90	.70	.10
GROUP 2	9.77	.70	.90	.70	.10
GROUP 3	9.47	.70	.90	.70	.10
GROUP 4	9.37	.70	.90	.70	.10
GROUP 5	9.15	.70	.90	.70	.10
GROUP 6	8.92	.70	.90	.70	.10

GROUP 1 - Cranes, shovels, draglines, backhoes, clamshells, derricks, caisson rigs, pile driver, skid rigs, dredge operator & traveling crane (bridge type), concrete paver (over 27E), concrete spreader & distributor

GROUP 2 - Material hoists, tractor or truck mounted hydraulic backhoe tractor or truck mounted hydraulic crane (5 tons or under), machinist, tractor (over 40 H.P.), bulldozer (over 40 H.P.), Endloader (over 40 B. P.) Forklift (25' and over), motor patrol, scraper operator, sideboom, straddle carrier, mechanic and welder, bituminous plant and paver operator, roller (over 5 tons), rotary drill operator and blaster, trencher (wheel type or chain type having over 8-inch bucket)

GROUP 3 - Concrete and grout pumps, backfiller, concrete auto breaker (large), concrete finishing machine (Road type) roller (Rubber tire), concrete batch hopper, concrete conveyor systems, concrete mixers (145 or over), screw type pumps, and gypsum pumps, tractor, bulldozer, endloader (under 40 H.P.), pumps (well points), trencher (chain type having bucket 8-inch and under), industrial locomotives, roller (under 5 tons) and firemen (pile driver and derricks)

GROUP 4 - Hoists (Automatic), Forklift (12' to 25'), Tampers-Compactors (riding type), assistant engineer, "A" frames & winch trucks, concrete auto breaker, hydro-hammer (small), brooms and sweeper, hoists (Toppers), stump chipper (large) boats, (tug, safety work, barges and launch)

GROUP 5 - Shouldering machine operator, screed operator, farm or industrial tractor-mounted equipment, post hole digger, 8 tone crushers and screening plants, firemen (asphalt plants), air compressor (300 CFM or over)

GROUP 6 - Generators over 150 KW, pumps over 3" Augers (vertical and horizontal), combination small equipment operator; air, electric, hydraulic jacks (slip force), compressors (under 300CFM); welding machines, heaters (mechanical), prestress machines, Bobcats, Generators (under 150 KW), pumps (3" and under); winches (small electric), oiler and greaser, boiler operators (temporary heat), Rotary drill helper, conveyor, forklift (12' and under)

**federal register**

FRIDAY, APRIL 8, 1977

PART VIII



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**CONSUMER  
PRODUCT SAFETY  
COMMISSION**



**CHILDREN'S WEARING  
APPAREL CONTAINING  
TRIS**

Interpretation as Banned Hazardous  
Substance

## Title 16—Commercial Practices

## CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

## PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

## Children's Wearing Apparel Containing TRIS; Interpretation as Banned Hazardous Substance

AGENCY: Consumer Product Safety Commission.

ACTION: Interpretation of a statutory provision.

SUMMARY: The Commission is notifying the public that children's clothing containing the chemical flame-retardant TRIS is banned from commerce. According to the applicable statutory provisions, such clothing is banned by definition because it is intended for use by children and could cause substantial illness because of its toxicity.

Tests have established that TRIS causes cancer in animals, and can enter the bodies of children by being absorbed through the skin. This absorption occurs when children wear TRIS-treated clothing. Children also ingest TRIS by "mouthing" the clothing.

Since washing removes much of the available TRIS, children's clothing containing TRIS that is already in the hands of consumers, unless unwashed, is not banned. However, children's clothing containing TRIS that is in commerce on April 8, 1977, or is introduced into commerce after that date is banned and must be repurchased by any manufacturers or others who sold it.

DATES: The interpretation is effective on April 8, 1977.

## FOR FURTHER INFORMATION CONTACT:

Francine Shacter, Office of Standards Coordination and Appraisal, Consumer Product Safety Commission, Washington, D.C. 20207. (202-492-6470).

ADDRESS: All of the documents, studies, and other materials that are discussed in the preamble and listed under References are available from the Office of the Secretary, 1111 18th Street NW, Washington, D.C. 20207. (202-634-7700).

## SUPPLEMENTAL INFORMATION:

## BACKGROUND

In March 1976 the Environmental Defense Fund (EDF), a health-oriented public interest organization, petitioned the Commission to require cautionary labeling for wearing apparel containing the chemical flame-retardant TRIS (2,3-dibromopropyl) phosphate, hereafter "TRIS," in surface concentrations in excess of 100 parts per million (ppm). This petition (HP 76-10) was based on data that showed that TRIS was capable of inducing mutations in *Salmonella typhimurium* when tested in both the presence and absence of metabolic activating systems (1,2,3).<sup>1</sup> The petition asserted at page 10 that this test has been shown to be a "highly reliable predictor" of carcinogenicity.

<sup>1</sup>The documents cited by parenthetical numbers correspond to the documents listed in the section on References, below.

The Commission conducted a search of the existing literature in April 1976, and initiated a biological testing program in its own laboratories in June 1976 to evaluate the scientific issues raised in the petition. In addition, the Commission asked the National Cancer Institute (NCI) to expedite its rat and mouse carcinogenicity feeding studies involving TRIS that were already underway (4). The NCI agreed to provide the Commission with preliminary results from these studies as they became available (5).

On February 4, 1977 the Commission obtained the preliminary NCI test data (6). Within two weeks, the Commission's Bureau of Biomedical Science (BBS) provided a statistical analysis of the NCI rat and mouse bioassay study (7).

Based on its analysis of the same NCI preliminary test results, EDF petitioned the Commission on February 8, 1977 (HP 77-8) to ban the sale of wearing apparel containing TRIS (8). The Commission's technical staff met with Dr. Robert Harris, Dr. Joseph Highland, and Mr. Robert Rauch of EDF on February 18 to discuss this petition.

On March 2, the Commission met with Dr. Marvin Schneiderman, an Associate Director of the National Cancer Institute, and on March 8 the Commission met with the same EDF representatives that had met with the staff. All of these meetings were open to the public and transcripts are available (9, 10, 11).

Ms. Joanne Siegel and Dr. Reuben Epstein also petitioned the Commission, on February 1, 1977, to address the risk presented by wearing apparel containing TRIS (12). This petition (FP 77-1) requests the Commission to amend or revoke its flammability standard for children's sleepwear sizes 0-6X (16 CFR Part 1615), issued under the Flammable Fabrics Act, which has encouraged the use by manufacturers of TRIS as a flame retardant (although this standard imposes performance requirements concerning flame resistance, it neither prohibits nor requires the use of TRIS or any other chemical flame retardant).

On March 16, 1977 an updated draft of the TRIS bioassay results was released by NCI for the March 25 meetings of the Data Evaluation and Risk Assessment Subgroups of the Clearinghouse on Environmental Carcinogens (13). These two subgroups act as statutory advisory groups to the NCI's Division of Cancer Cause and Prevention. At its March 25 meeting, the Data Evaluation Subgroup reviewed and approved the NCI bioassay results for TRIS (14).

Early in April 1977, the Commission completed its final report (15) on its sub-chronic dermal and oral ingestion studies along with radioactive <sup>14</sup>C-TRIS tracer studies and human lifetime risk estimates of cancer in the human population. These will be discussed in more detail in the section of Hazard, below.

## HAZARD

## A. CARCINOGENICITY

The Commission has carefully reviewed the preliminary data from the National Cancer Institute on the car-

cinogenicity of TRIS (6). Under the NCI testing program, begun early in 1974, rats and mice were fed TRIS daily at two dose levels. Weanling animals of both sexes were placed on diets containing 50 (low dose) or 100 (high dose) ppm TRIS in the case of rats; 500 (low dose) or 1,000 (high dose) ppm TRIS in the case of mice; or no TRIS (control animals). After two years the surviving animals were sacrificed and examined for pathological changes.

The test mice that were fed TRIS developed tumors in the liver, the kidney, the lung and the stomach and the test rats developed tumors in the kidneys (preliminary Table II in (6)). These test data establish TRIS as an animal carcinogen in two species and at multiple sites.

The Commission has no conclusive data that establish that TRIS has caused cancer in humans. Since cancers develop over many years and cannot be easily linked to particular causes, this is not unexpected. The Commission's Office of the Medical Director (OMD) believes that once a substance is established as an animal carcinogen it can never be assured as a safe substance for human exposure (16). In addition, OMD believes that all known human carcinogens have been shown to be carcinogenic in laboratory animals (16, 17).

Dr. Marvin Schneiderman of NCI has told the Commission that he knows of no chemicals that provide a high risk to animals but no risk to humans (pp. 43-44 of (10)). The February 1977 EDF petition asserts that TRIS is as potent or more potent in animals than a number of known human carcinogens (pp. 13-13a of (8)). Research Associate N. Kim Hooper and Professor Bruce N. Ames of the University of California, Berkeley's Department of Biochemistry, have stated in a March 21, 1977 letter to Chairman Byington (18) that TRIS is a more potent carcinogen than the human carcinogen benzidine or  $\beta$ -naphthylamine (p. 3 of (18)).

In a June 2, 1976 report, (19), the National Cancer Advisory Board states "A major source of data on carcinogenicity comes from bioassays in experimental animals. Experience has indicated that, with one or two possible exceptions, compounds that are carcinogenic in humans are also carcinogenic in one or more experimental animal bioassay systems. In addition, several compounds first detected as carcinogens in experimental animals were later found to cause human cancer. Demonstration that a compound is carcinogenic in animals should, therefore, be considered evidence that it is likely to be carcinogenic in humans, unless there is strong evidence in humans to the contrary." (See also p. 11 of (8).)

## B. MUTAGENICITY

The Commission has received several reports on the mutagenic potential of TRIS. Hooper and Ames (pp. 1 and 3 of (18)) focus on bacterial systems utilizing various grades of TRIS and TRIS-treated cloth. They also point out that

TRIS is a potent mutagen in *Drosophila*, causing large numbers of recessive lethal mutations in offspring. Moreover, they assert that TRIS is capable of causing damage to DNA synthesis in human cells in tissue culture.

The general assertion of Hooper and Ames is that TRIS is mutagenic and "likely to cause genetic birth defects in the offspring of children exposed to it" (p. 1 of (18)). They base this conclusion on their belief that TRIS can be absorbed through the scrotum and could effect spermatogenesis.

Dr. M. Prival, in an article entitled, "Tris (2,3-Dibromopropyl) Phosphate: Mutagenicity of a Widely Used Flame Retardant" (20), has found TRIS to be mutagenic in histidine-requiring strains of *Salmonella typhimurium* (although he does not believe his results conclusively demonstrate that TRIS is a carcinogen).

It must be noted that the BBS analysis of bone marrow chromosomes obtained from rats which received either a single or multiple daily oral dose of TRIS five days per week for 13 weeks did not demonstrate any chromosome aberrations (15).

#### C. EXPOSURE

TRIS is incorporated into some wearing apparel in at least two ways, according to information obtained by the Commission's Bureau of Engineering Sciences (21). Certain wearing apparel is manufactured from fabric knitted or woven from fibers that contain TRIS. Other apparel is manufactured from fabric that has been topically treated with TRIS. In both cases, some TRIS that is not tightly bound or contained within the fibers can be removed from the garment by the sucking, or "mouthing," of an infant on the sleeve or other portion of the garment. The TRIS that infants can ingest in this manner is a source of exposure of infants to TRIS. Another source of exposure is absorption through the skin.

The Commission has reviewed various estimates of the amount of TRIS to which a child may be exposed. These estimates come from a March 16, 1977, report prepared by the Bureau of Biomedical Science (22); from a March 8, 1977 report by Robert H. Harris, Ph. D., of EDF, entitled *Estimating the Cancer Hazard to Children From Tris-treated Sleepwear* (23); and from the March 21 Hooper and Ames letter (18). The general assumptions underlying all of these estimates are (a) that a child mouths the garment and ingests available TRIS; (b) that there is absorption through the skin; and (c) that the child wears numerous garments over a period of time containing various amounts of available TRIS.

(1) *Bureau of Biomedical Science.* BBS has prepared a range of estimates on the amount of TRIS to which a child could be exposed over a 6-year period, both from skin absorption and from mouthing. Their estimates of total TRIS absorbed ranged from 2.5 to 77.4 mg/kg, depending upon the body area exposed to TRIS-treated garments.

In the Commission's subchronic toxicity and dermal penetration studies, the

groups of rats which received daily doses of TRIS by the oral route (25 mg/kg and 250 mg/kg) demonstrated renal nephrosis following a 13 week period. The weekly dermal application of 1 ml/kg of undiluted TRIS to clipped rabbits produced renal nephrosis and testicular atrophy also at the end of a 13 week period. This data correlates well with NCI's finding of renal carcinoma in rats and mice at a 2-year period.

The degree of penetration of TRIS in rabbit and rat of both sexes was determined following dermal application of <sup>14</sup>C-TRIS at 0.9 ml/kg and at 0.05 ml/kg. Radiolabeled TRIS from TRIS-treated cloth was also shown to penetrate the skins of rabbits. Penetration was enhanced by the presence of urine on the cloth. The kidney was found to be the organ of highest specific radioactivity in all cases. Most of the absorbed radiolabeled TRIS was excreted in the urine (for more detail see (15)).

(2) *Environmental Defense Fund.* EDF estimates of the total lifetime exposure for a child range between .085 mg/kg to 85 mg/kg (p. 15 of (23)) and are based primarily upon dermal absorption for a 10 or 20 kg child exposed to one, ten or 20 pairs of TRIS treated sleepwear.

(3) *Hooper and Ames.* Based on one year of exposure of a 7 kg child, Ames and Hooper estimate that the exposure due to dermal absorption would be 70 mg/kg/year and the dose a child receives by sucking is estimated as one percent of that obtained through skin absorption (18).

#### D. RISK ASSESSMENT

The Commission has considered risk assessments that are based on the estimates of exposure cited in Section C, above. The methods used to prepare the estimates are described in a March 1977 paper entitled, *Estimates of Human Lifetime Carcinogenic Risk From Exposure to TRIS*, prepared by Drs. Charles Brown, Marvin Schneiderman, and Kenneth Chu of the National Cancer Institute (24). The statistical extrapolations are based on the use of two mathematical models: The single-hit model (linear no threshold) and the log-probit model (Mantel-Bryan). The use of these mathematical models and the extrapolations from animals to man rest on the following assumptions: (a) the animal dose can be converted to an "equivalent" human exposure level; (b) mouse and man, and rat and man, have equal sensitivities to TRIS; (c) infants and children are no more, or less, sensitive to TRIS than are adults; and (d) the dose given to an animal during its entire life can be converted to an equivalent daily dose during a specific period of time which is less than a lifetime.

(1) *Bureau of Biomedical Science.* BBS has projected cancer incidence rates based on its exposure estimates and on data from the NCI study. These projected rates show the kidney to be the primary target organ. The best estimates of BBS (25) is approximately 300 kidney cancers per million male population. For fe-

males the projected rate is about one-fifth that of males.

Based on the single hit model the BBS estimates for lifetime risk of cancer of the kidney is between 60 and 1,800 cases per million male population. For the log probit model the estimates range from 25 to 5,100 cases per million males. All of these estimates are lifetime risk or lifetime incidence estimates.

(2) *Environmental Defense Fund.* EDF also provided its estimates on human exposure to NCI which used the same models, and these data provided estimates of a lifetime incidence of cancer of as high as 6,000 per million male population, based on maximum exposure, the rat kidney and the log probit model.

(3) *Hooper and Ames.* Hooper and Ames estimate that for one year of exposure, 1.7 percent of the children would develop cancer (17,000 cases/million). An exposure throughout childhood would give a higher risk (p. 8 of (18)).

#### E. EFFECT OF WASHING

There is evidence both from the March 1976 EDF petition (1) and from reports of the Commission's Bureau of Engineering Sciences (21) that the amount of TRIS that can be easily removed from a garment is appreciably reduced by repeated washings. The March 1976 petition states at page 5 that " \* \* \* most of the surface TRIS could be washed out of the fabrics, which implies that laundering in use will reduce exposure to TRIS. For example, two samples of different polyester fabric had 70,000 ppm and 37,500 ppm of surface TRIS before, and 35 ppm and 100 ppm of surface TRIS after washing, respectively. It would appear from these studies that during the first three washings of polyester fabrics, surface TRIS can be reduced by greater than 95%, while the total amount in the fabric will be reduced by only about 12%." (The fabric containing 70,000 ppm had been specifically treated for test purposes and has not been commercially marketed.)

According to the BBS review of literature data, acetate fabrics contain 65-600 ppm "surface TRIS" (more uniform and lower concentrations than polyester) and polyester fabrics contain 260-37,500 ppm surface TRIS. Although BES stresses the limited reliability of these figures, estimates from the studies show that washing removes up to 85 percent of surface concentration in acetate fabrics and from 21 to 82 percent in polyester fabrics.

#### F. EFFECT ON FLAMMABILITY INJURIES

Much of the use of TRIS in wearing apparel is to meet the Commission's flammability standards for children's sleepwear (16 CFR Parts 1615 and 1616). The Commission's Bureau of Epidemiology (BEP) believes, based on an analysis of injury information and on an article on children treated by physicians,

<sup>2</sup> The term "surface TRIS" is merely one of convenience. Whether or not the easily removable TRIS is literally on the surface of the fibers is unknown. The more fundamental distinction would appear to be between that amount of TRIS that is loosely bound to fibers and that which is more tightly bound, wherever it may be.

that children who are burned while wearing flame-resistant sleepwear tend to sustain less extensive burns than children who are burned while wearing non-flame-resistant sleepwear (26). Data indicate that the number of deaths to children ages 1-4 due to clothing ignition decreased following the effective date of the standard for children's sleepwear in sizes 0-8X.

Because the Commission's flammability standards for children's sleepwear are performance standards, the Commission assumes that manufacturers can and will comply with the standard without using TRIS or any other chemical which presents a hazard to the consumer. There are fabrics which meet the standard without using any chemical flame retardants (27).

#### MARKETING FACTORS

Garments treated with TRIS are made of either 100 percent polyester or acetate and triacetate blends. There is no certain way to distinguish among 100 percent polyester fabrics that are untreated, treated with TRIS, or treated with another flame retardant. The Commission understands, however, that all acetate and triacetate fibers used in children's sleepwear fabrics contain TRIS.

The Commission has found that flame resistant garments currently on the market are: (a) children's sleepwear, sizes 0-14, for which the flame resistant requirement is mandatory, and (b) those which resulted from voluntary programs undertaken by a few major retailers. The Commission believes that there is no significant inventory of flame-resistant garments resulting from voluntary program at this time (p. 4 of (27)).

The Commission's Bureau of Economic Analysis (BEA), in a March 21, 1977 report (28) has estimated that 18 million garments, over one-third of the spring 1977 production of children's sleepwear, contain TRIS. If inventories are taken into account, the portion of TRIS-treated merchandise would be over 40% of all children's sleepwear in the retail pipeline, or about 20 million garments. About 10-20 percent of this has already been sold to consumers. In addition, BEA has estimated that about 7 million square yards of TRIS-treated fabric is in inventory with fabric and garment producers.

BEA believes that a small number of national retail chain outlets and very large discount stores account for more than 55 percent of children's sleepwear sales, while department stores account for 20 percent, and specialty and variety stores account for less than 10 percent of annual sales.

#### ENVIRONMENTAL IMPACT

The Commission has considered the potential environmental impacts of its interpretation that TRIS-treated wearing apparel is a banned hazardous substance. A preliminary environmental assessment is available (29) and a final

assessment will be available as soon as possible. The Commission has investigated anticipated impacts relating to chemical flame-retardants that will be used as substitutes for TRIS, relating to substitute end-use products, and relating to the disposal of garments, fabrics, fibers, or yarns treated with TRIS, as well as the anticipated economic impacts.

Based on the information that is available thus far, it appears that there will be no significant effect on the human environment resulting for disposal of TRIS-treated garments, fabrics, fibers, or yarns. While more information is needed on the potential impacts from the use of substitute chemical flame-retardants and substitute end-use products, the Commission knows of no significant effects in this area at this time.

Because of the emergency circumstances of the ban on TRIS-treated children's wearing apparel, the Commission has been in contact with the Council on Environmental Quality (CEQ) concerning alternative arrangements for complying with the CEQ guidelines on the National Environmental Policy Act (30). As of this date, the Commission's staff has received oral CEQ concurrence with this approach.

#### REFERENCES

The parenthetical numbers used in the above portion of the preamble refer to the following documents, studies, and other materials:

- (1) March 24, 1976 petition (HP 76-10) from the Environmental Defense Fund.
- (2) Letter from Glenn E. Schweitzer, Director, Office of Toxic Substances, EPA to Stanley R. Parent, Executive Director, CPSC, October 21, 1976, and a similar letter to Dr. David Rall, Director, NIEHS, on the same date.
- (3) Ames, B., in a letter to Dr. B. L. Van Duuren, New York University Medical Center, January 28, 1976.
- (4) November 8, 1976 letter from Chairman S. John Byington to Frank J. Rauscher, Ph. D., Director of the National Cancer Program of NIH.
- (5) December 3, 1976 letter from Robert A. Squire, D.V.M., Ph. D., Acting Chief of the Carcinogen Bioassay and Program Resources Branch at NIH, to Chairman Byington.
- (6) Preliminary NCI data on TRIS bioassay feeding studies.
- (7) Memo from R. M. Hehir to Don Clay on February 16, 1977 entitled "BBS Statistical Analysis of NCI Cancer Bioassay Report on TRIS (2,3-dibromopropyl) phosphate, with attachments.
- (8) February 8, 1977 petition (HP 77-8) from the Environmental Defense Fund.
- (9) Transcript of February 18, 1977 meeting between Commission staff and EDF representatives.
- (10) Transcript of March 2, 1977 Commission meeting with Dr. Schneiderman, NCI.
- (11) Transcript of March 8, 1977 Commission meeting with EDF representatives.
- (12) February 1, 1977 petition (FP 77-1) from Ms. Joanne Seigel and Dr. Reuben Epstein.
- (13) Transcript of Proceedings—National Institute of Health Meeting of Data Evaluation and Risk Assessment Subgroups of the Clearinghouse on Environmental Carcinogens—March 25, 1977.

(14) March 26, 1977 memorandum from R. M. Hehir to Michael Brown and attached meeting log.

(15) Final Report—Subchronic and Radioactive <sup>14</sup>C Tracer Studies of TRIS (2,3-dibromopropyl) phosphate in Laboratory Rodents, prepared by Bureau of Biomedical Science/CPSC, April 1, 1977.

(16) February 15, 1977 memorandum from Albert F. Esch, Medical Director, on extrapolation of risk from animals to humans.

(17) February 18, 1977 memorandum from Rita A. Orzel, Ph. D., of the Commission's Division of Human Toxicology and Pharmacology in OMD, same subject as 16 above.

(18) March 21, 1977 letter from Hooper and Ames on hazards of carcinogenicity and mutagenicity to humans through dermal absorption and ingestion of TRIS.

(19) June 2, 1976 National Cancer Advisory Board report.

(20) "TRIS (2,3-dibromopropyl) phosphate: Mutagenicity of a Widely Used Flame Retardant," Vol. 195, (pp. 76-78) Jan. 7, 1977, by Drs. Michael J. Prival, Elena C. McCoy, Bezalel Gutter and Herbert S. Rosenkranz.

(21) March 15, 1977 memorandum from Margaret Neily, BES entitled "Review of Literature on Availability of TBPP from Treated Fabrics."

(22) March 16, 1977 memo from BBS entitled "Chemical Availability of Tris (2,3-dibromopropyl) phosphate (TBPP) and Dermal and Oral Absorption Models for Three Possible Use Patterns."

(23) March 8, 1977 Harris report entitled "Estimating the Cancer Hazard to Children from Tris-treated Sleepwear."

(24) March 1977 Brown, Schneiderman, Chu paper entitled "Estimates of Human Lifetime Carcinogenic Risk from Exposure to Tris."

(25) March 17, 1977 Bayard to Hehir memo entitled "Preliminary Analysis of Tris Induced Human Lifetime Risk to Cancer."

(26) June 1976 BEP report on sleepwear entitled "Tris and Children's Sleepwear."

(27) February 25, 1977 memorandum of James Sharman, OEX, with attached marketing study.

(28) March 1, 1977 BEA report entitled "Availability of Garments Treated with TBPP."

(29) Preliminary environmental assessment of a TBPP ban prepared by BEA.

(30) April 5, 1977 letter to CEQ Acting General Counsel David Tunderman.

#### STATUTORY FINDINGS

Section 2(f)(1)(A) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(1)(A)) defines "hazardous substance" as "any substance or mixture of substances which is toxic \* \* \* if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." Section 2(g) of the FHSA (15 U.S.C. 1261(g)) states that "[t]he term 'toxic' shall apply to any substance \* \* \* which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface."

Section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)) defines "banned hazardous substance" as "any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous



substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted." If a product is a banned hazardous substance, it is prohibited from interstate commerce by section 4 of the FHSA (15 U.S.C. 1263). Seizures of banned hazardous substances in interstate commerce are authorized by section 6 of the FHSA (15 U.S.C. 1265). Sections 5 and 8 (15 U.S.C. 1264 and 1267) authorize the Commission to seek injunctions or criminal penalties against persons who violate the prohibitions listed in section 4 of the FHSA.

Section 15 of the FHSA (15 U.S.C. 1274) requires the automatic repurchase of banned hazardous substances. Manufacturers (including importers for resale) must repurchase from their purchasers. Distributors must repurchase from their purchasers. Dealers who sold at retail must repurchase from any person who returns the items to them. In every case, a refund of the purchase price must be made in addition to the payment of certain expenses incurred in returning the item(s). However, a recently-issued Commission regulation permits replacement or repair of banned items instead of repurchase, at the option of the owner (16 CFR 1500.203). The Commission's other regulation concerning FHSA repurchase requires that retailers place signs in their establishments informing customers of the repurchase (see 16 CFR 1500.202).

The Commission finds that children's wearing apparel containing TRIS that is currently in interstate commerce or will be introduced into interstate commerce in the future is a banned hazardous substance according to these applicable provisions of the FHSA. In addition, any children's wearing apparel containing TRIS that has not been washed, even if it has already been sold, is also banned as hazardous. Such wearing apparel is toxic and presents a substantial risk of cancer as a result of its foreseeable absorption through the skin and ingestion by mouthing. It is also of course intended for use by children.

The Commission believes that children's wearing apparel containing TRIS that is already in the hands of consumers and has been washed does not present a substantial risk of personal injury or illness. After children's wearing apparel containing TRIS is bought, worn, and washed, the risk decreases. As noted above, a few washings remove as much as 95 percent of the TRIS that can be absorbed or ingested. In addition it would be relatively easy for consumers to be sure that their children's apparel is washed a few times before it is worn. In fact, the Commission assumes that most of the apparel that consumers now own has already been washed one or more times.

The Commission believes that the available test data and analyses support

a withdrawal of TRIS-treated children's wearing apparel from commerce but not a recall of such apparel that has already been sold to consumers and washed by them. Children's wearing apparel containing TRIS that is in interstate commerce on April 8, 1977 or that is introduced into interstate commerce after that date is banned. Such unwashed, brand-new apparel presents a substantial risk and the Commission's interpretation prohibits the sale of such apparel to consumers.

In addition, the Commission believes that uncut fabric containing TRIS sold at retail, if consumers make it into wearing apparel, presents the same risk of illness as wearing apparel containing TRIS that is sold at retail. The scope of this interpretation accordingly includes such uncut fabric.

The Commission also believes that wearing apparel that is merely sewn with thread containing TRIS does not present a substantial risk of illness. The scope of the interpretation thus includes only wearing apparel made from fabric containing TRIS.

The Administrative Procedure Act imposes requirements on agencies for notice of proposed rulemaking, opportunity for public participation, and a delayed effective date (5 U.S.C. 553). However, these requirements are not applicable to interpretive rules or general statements of policy and are therefore not applicable to the interpretation announced in this document. Even if the rules were to be considered general rulemaking, the Commission for good cause finds that notice and public comment and a delayed effective date are contrary to the public interest because the statutory intent and structure of the FHSA is that children's articles that present a substantial risk of illness based on their toxicity must be banned without any delay. As the legislative history states, "[t]oys or other articles intended for use by children which bear or contain a hazardous substance are banned by the language of the bill itself \* \* \* (Senate Report No. 1551, 89th Cong., 2d Sess., page 2).

#### COMMISSION ACTION ON PETITIONS

The Commission has interpreted the section 2(g)(1)(A) banning provision of the FHSA to apply to children's wearing apparel containing TRIS. Although this is not a rulemaking action, it provides a remedy that satisfies a major portion of the EDF's February 1977 petition (HP 77-8). In fact, the EDF urged the Commission, in a February 16, 1977 letter that followed the submission of its petition, to utilize the section 2(g)(1)(A) provision. The Commission's action similarly supersedes a major portion of the EDF's March 1976 petition (HP 76-10) which requested precautionary labeling for wearing apparel containing TRIS in specified amounts. The Commission believes that little or no wearing apparel containing TRIS,

other than children's wearing apparel, is currently in interstate commerce or would be introduced into interstate commerce in the future.

The petition from Ms. Siegel and Dr. Epstein (FP 77-1) requests regulatory action under the Flammable Fabrics Act to address the hazard presented by children's sleepwear in sizes 0-6X containing TRIS. The Commission believes that it has granted this petition by interpreting section 2(q)(1)(A) as banning children's wearing apparel containing TRIS.

Portions of the EDF's February 1977 petition make requests that concern the use of flame retardants other than TRIS in wearing apparel. Specifically, the petition asserts that tetrakis (hydroxymethyl) phosphonium chloride (THPC) and Pyroset TKP may be hazardous. In addition, the petition seeks the following labeling for wearing apparel for which industry has not investigated the health effects: "[T]he toxic properties of the flame retardant chemical(s) used in this product have not been evaluated."

Although the Commission does not currently know which chemicals, if any, are hazardous, a labeling requirement under section 27(e) of the CPSA is under consideration by the Commission. The Commission will consider this portion of the February 1977 EDF petition as a petition under the Administrative Procedure Act to initiate a proceeding for a section 27(e) rule.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(A), (g), (q)(1)(A) and 10(a), 74 Stat. 372, 374, as amended 80 Stat. 1305; 15 U.S.C. 1261(f)(1)(A), (g), (q)(1)(A), 1269(a)) and under authority vested in the Consumer Product Safety Commission by the Consumer Product Safety Act (sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend 16 CFR Part 1500.18 by adding a new subsection (d) as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(c) [Reserved]

(d) *Toys and other children's articles presenting toxicity hazards.* Under the authority of sections 2(f)(1)(A), 2(g), 2(q)(1)(A), and 10(a) of the act, the Commission has declared that the following articles are banned hazardous substances because they are toys or other articles intended for use by children that are hazardous substances, or bear or contain hazardous substances in such manner as to be susceptible of access by a child to whom they are entrusted, based on the fact that they may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, because of their toxicity:

## RULES AND REGULATIONS

(1) Children's wearing apparel made from fabric which contains TRIS (2,3-dibromoprophyl) phosphate and which is in interstate commerce on April 8, 1977 or which is introduced into interstate commerce after that date or which has not yet been washed (even if it has been sold before that date); and

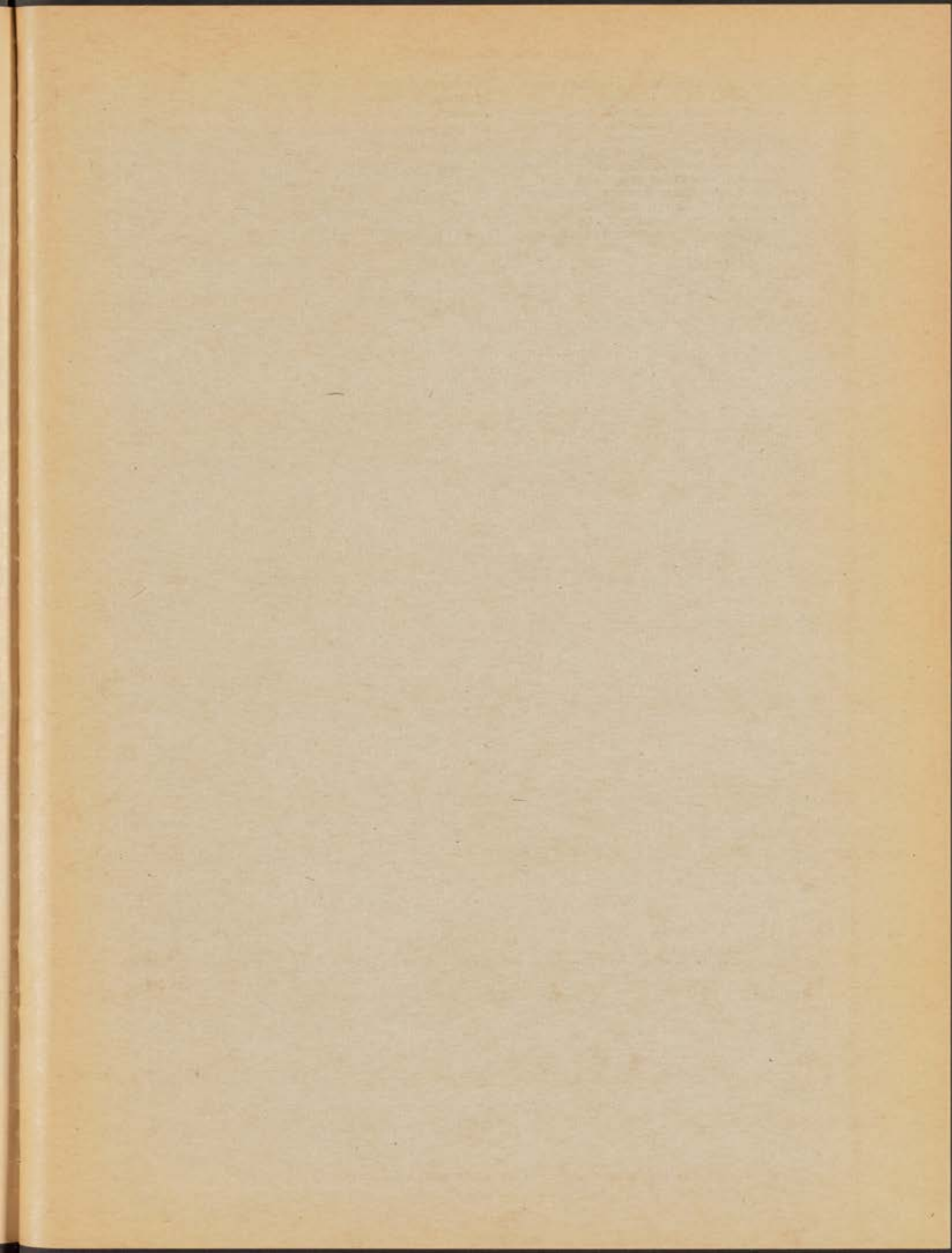
(2) Uncut fabric, intended for sale to consumers for use in children's wearing apparel, which contains TRIS (2,3-dibromoprophyl) phosphate and which is

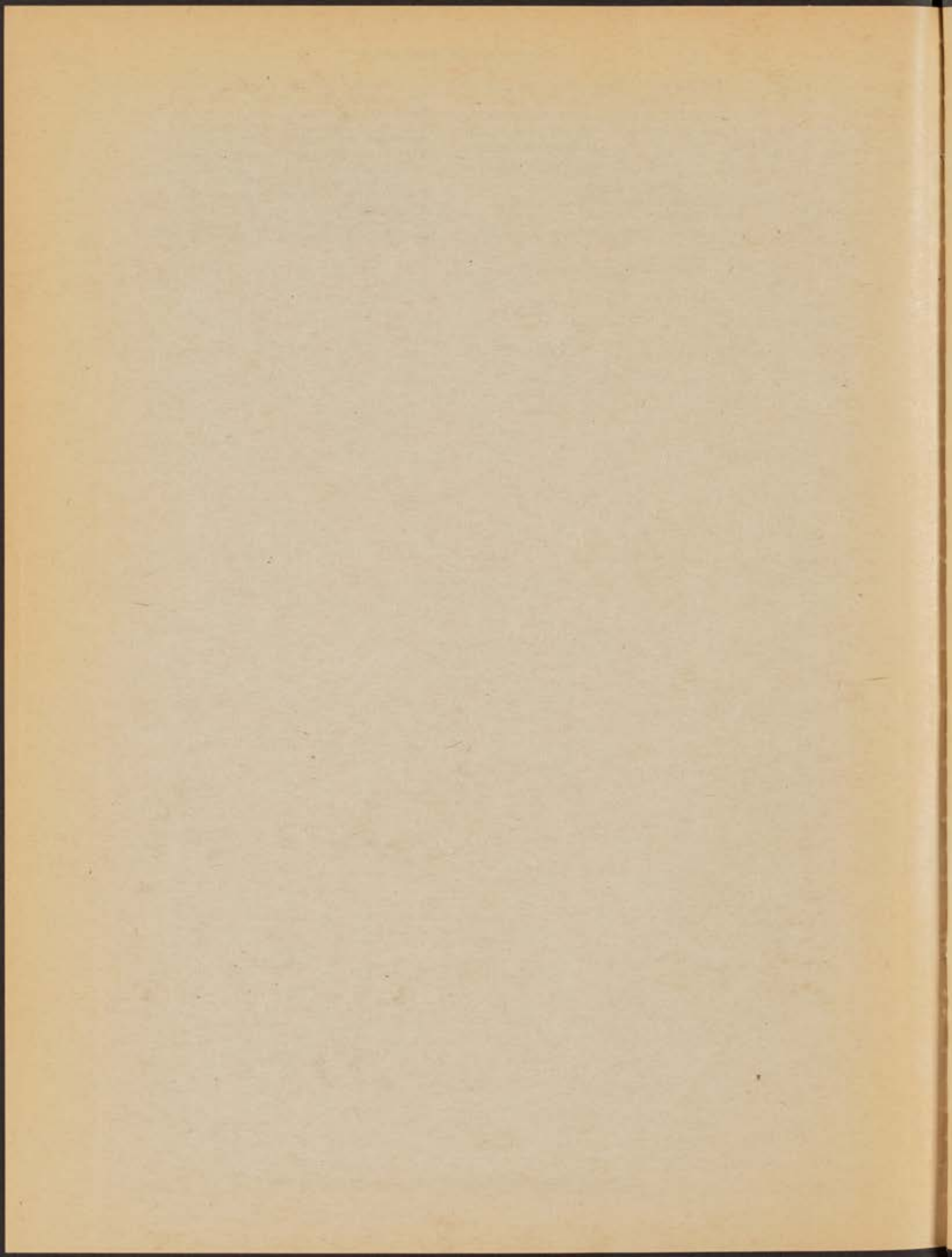
in interstate commerce on April 8, 1977 or which is introduced into interstate commerce after that date or which has not yet been washed (even if it has been sold before that date).

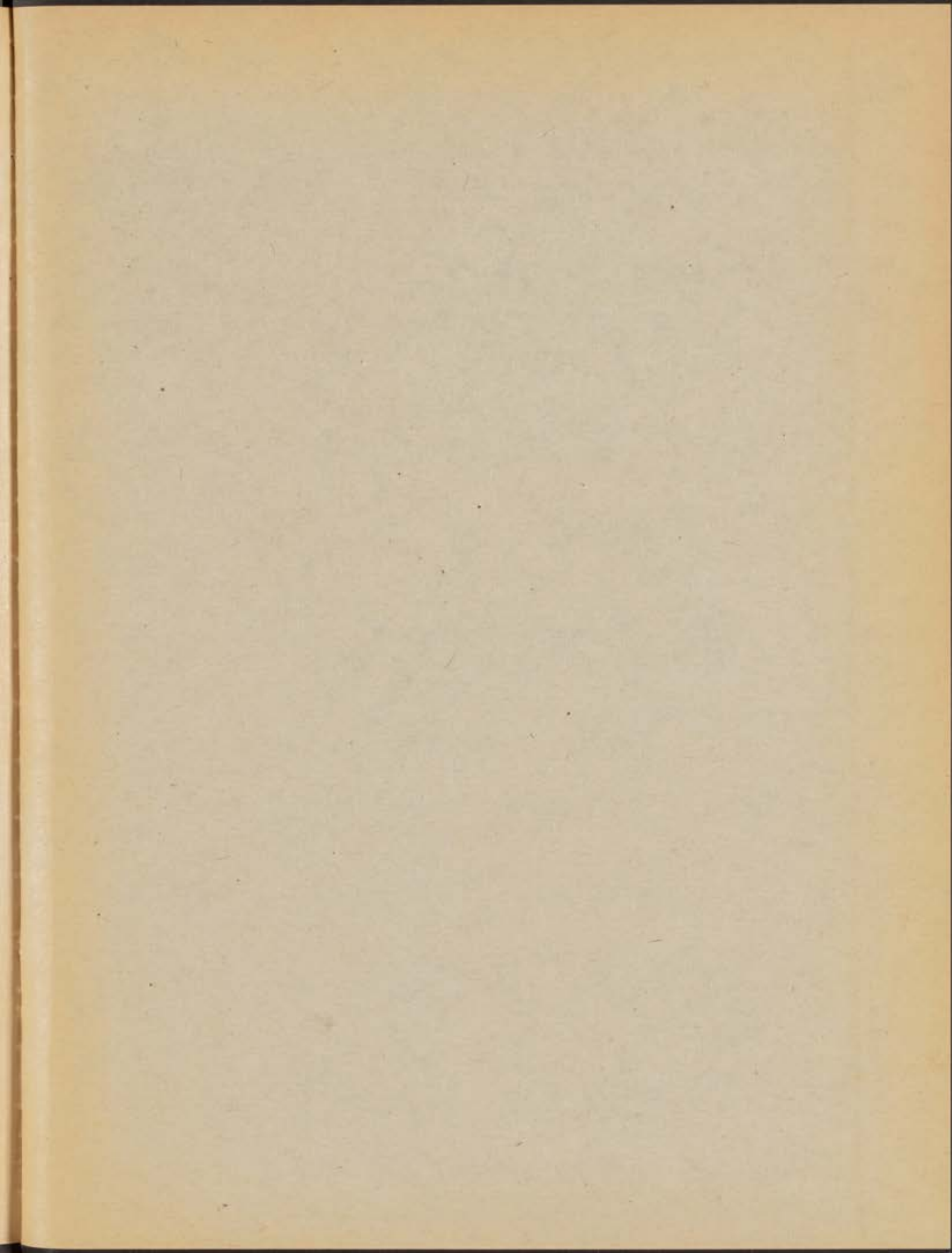
Dated: April 7, 1977.

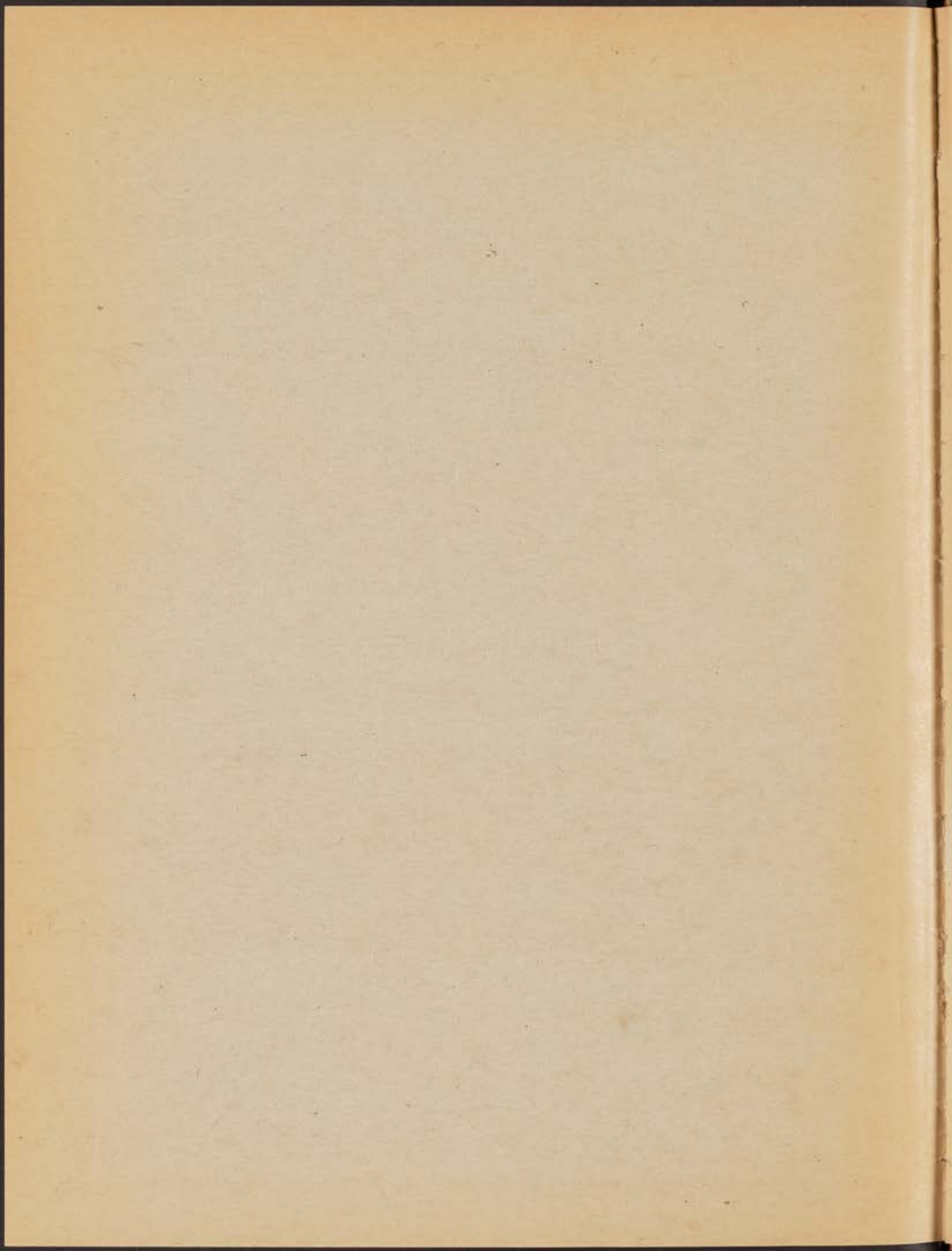
SADYE E. DUNN,  
*Secretary, Consumer Product  
Safety Commission.*

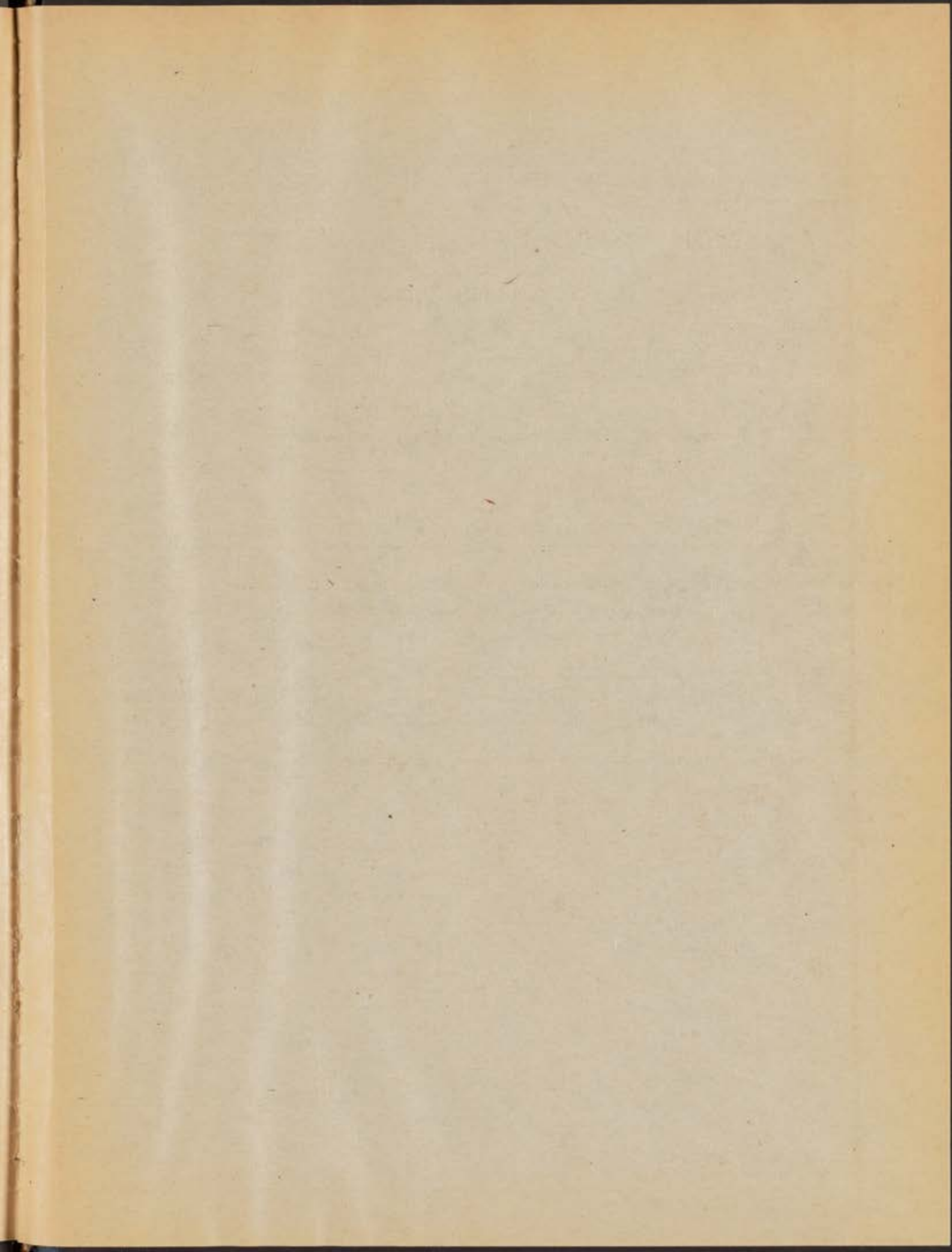
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